

TAB	DOCUMENT	DATE	DOC ID
<b>VOLUME 4</b>			
<b>Sentencing Materials</b>			
2.	Transcript of Proceedings re Section 166 Certificate	14 October 2022	AST.002.004.0028
2A.	Transcript of Proceedings re Section 166 Certificate continued	24 February 2023	AST.002.004.0029
2B.	Transcript of sentencing judgment	31 March 2023	AST.002.010.0001

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APT:SND

TR66082

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

5 JUDGE O'ROURKE SC

FRIDAY 14 OCTOBER 2022

10 **2019/00026907 - R v Wayne Gregory ASTILL****NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****PROCEEDINGS AFTER CONVICTION CONTINUED**

15 ---

HER HONOUR: Yes, is this matter ready to proceed?

20 HUGHES: Your Honour, it is. Mr Astill, your Honour will recall, was found guilty by a jury on 25 August last with respect to a large number of matters. I have a Crown bundle, to use the vernacular, which was forwarded previously to your Honour's associate. I will, if now is a good time, tender that Crown bundle and I have a working copy for your Honour in addition to what's been forwarded.

25 HER HONOUR: Well, I've got something and I've read it, which contained the summary, the indictment, the 166 certificate, agreed facts in relation to three counts, criminal history, victim impact statement of Witness K,  
30 Witness O, and the custodial history. And then I received a handwritten victim impact statement of Witness C.

HUGHES: That's the material, your Honour, yes.

35 HER HONOUR: What about the facts for the agreed facts for the pleas?

HUGHES: They will be tendered as well. Your Honour--

HER HONOUR: That's only for three counts, though.

40 HUGHES: That's right.

HER HONOUR: There's the other four counts he's pleaded guilty to.

45 HUGHES: Yes, sorry, so there's the 166 matters to be resolved, just going through them, that's intimidation with inmate <sup>Witness N</sup> and one on inmate <sup>Witness B</sup>, then there's various pleas of guilty, which were the subject of the facts pleaded, tendered at the trial.

HER HONOUR: For the three counts, yes.

.14/10/22

1

APT:SND

TR66082

HUGHES: For the three counts.

HER HONOUR: But not for the other four.

5 HUGHES: We don't have agreed facts for those.

HER HONOUR: Well, we need to.

10 HUGHES: We need them. Your Honour, can I, without getting ahead of myself, can I just indicate this. What we've prepared, for the Crown's part, is proposed facts that your Honour would find in documentary form, of course.

HER HONOUR: Yes.

15 HUGHES: They are not agreed facts. These are, I've made clear what the Crown says your Honour would find with respect to each of the offences. I don't want to get ahead of myself and hand up what are really submissions for completely tendering the evidence, but at some stage today if I could give those so your Honour has those.

20 HER HONOUR: That'd be helpful, thank you.

HUGHES: There is also in a separate document reference to the intimidation offence with **Witness B**. Anyway, I'll get to those and your Honour will see them.

25 HER HONOUR: Okay, well, let's do one thing at a time.

HUGHES: One thing at a time.

30 EXHIBIT #A CROWN SENTENCE BUNDLE TENDERED, ADMITTED WITHOUT OBJECTION

HER HONOUR: You said that there was proposed Crown facts?

35 HUGHES: Yes, your Honour.

HER HONOUR: In relation to the trial offences?

40 HUGHES: Yes, your Honour, and the plea offences, yes.

HER HONOUR: Right. But if for those other four plea offences--

HUGHES: It includes those, yes. Yes, what the Crown says.

45 HER HONOUR: Has there been agreement with those in light of his plea?

TYLER-STOTT: Your Honour, I'm sorry, I just received this today. I will have the opportunity to go through it and respond to it in time.

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.14/10/22

2

APT:SND

TR66082

HER HONOUR: Okay. Well, I'll mark it at this stage exhibit B and we'll know that we need to go back to that.

5 EXHIBIT #B PROPOSED CROWN FACTS TENDERED, ADMITTED  
WITHOUT OBJECTION

And you said in relation to the 166 certificates, which, I must be frank, I didn't really look at those.

10 HUGHES: No. So those I anticipate, your Honour, I'll just tell you what they are--

HER HONOUR: So it's in relation to the intimidation of Witness B, intimidate Witness N , and unlawfully deliver tobacco to an inmate.

15 HUGHES: The latter charge, that unlawfully--

HER HONOUR: That's a backup, yes.

20 HUGHES: That's a backup.

HER HONOUR: So it's only two other ones that are related?

25 HUGHES: That's right.

HER HONOUR: And, what, you say on the basis of the evidence that was in the trial, I could make a finding in relation to those two charges?

30 HUGHES: Yes, your Honour.

HER HONOUR: Yes. Mr Tyler-Stott, do you have anything to say in relation to those two matters?

35 TYLER-STOTT: Your Honour--

HER HONOUR: At the moment, I should say.

40 TYLER-STOTT: At the moment the pleas of not guilty are maintained. I have received submissions about the 166 matters from the Crown, and as again if I can respond to those in time, your Honour.

HER HONOUR: Right. Now, did I receive some information or some notification that you're seeking an adjournment?

45 TYLER-STOTT: That's right, yes, your Honour.

HER HONOUR: Right. Well, was there any other material on sentence at this stage that you wanted to tender?

APT:SND

TR66082

HUGHES: Did your Honour have - your Honour might have said the sentencing assessment report, we got that. I don't know if that's been said to your Honour.

5 HER HONOUR: I have, and I have read that.

HUGHES: Thank you. That's all, your Honour.

10 HER HONOUR: Okay, so that is the Crown case, though, on sentence?

HUGHES: It is, your Honour.

15 HER HONOUR: And in relation to the victim impact statements, what are you seeking in relation to those? Are they seeking to be read out?

15 HUGHES: Yes, your Honour. There's three of those.

HER HONOUR: Is there only the three that you're relying upon?

20 HUGHES: Yes.

HER HONOUR: Okay.

25 HUGHES: Are they all--

HER HONOUR: Well, perhaps if I can just hear from Mr Tyler-Stott as to what he's wanting so I can see how to progress today.

30 HUGHES: Yes.

HER HONOUR: What are you seeking, Mr Tyler-Stott?

TYLER-STOTT: Your Honour, that the Crown finish what they need to do today. I don't want to impede that in any way.

35 HER HONOUR: Yes.

40 TYLER-STOTT: But when it comes to the defence case, if that might be deferred on the basis that we had instructed a Dr Emma Collins, a forensic psychologist, who returned a report.

HER HONOUR: I've read that report.

45 TYLER-STOTT: Yes, your Honour. And within that report it refers to PTSD. We don't have anything to corroborate that. It's been difficult to speak to Mr Astill. But we have a release and we'll be seeking the records from St John of God, which is where apparently the diagnosis was made and--

50 HER HONOUR: By a psychiatrist?

APT:SND

TR66082

TYLER-STOTT: By a psychiatrist, yes, your Honour, and see where that takes us.

5 HER HONOUR: All right. How long do you think you need?

TYLER-STOTT: Your Honour, I think six to eight weeks is my instructions. Unless your Honour wished to stand the matter over for a couple of weeks to get an update.

10 HER HONOUR: Or what about if we pencil a date in closer to that and if you need more time you can update me in a couple of weeks?

TYLER-STOTT: If your Honour pleases.

15 HER HONOUR: It's too far along. I think there needs to be some resolution for it. Are you issuing a subpoena upon the St John of God or are you basically seeking--

20 TYLER-STOTT: No.

HER HONOUR: --assistance from them?

25 TYLER-STOTT: We have a medical release for him and we'll see how we go with that.

HER HONOUR: Right, well, that shouldn't take that long, should it?

30 TYLER-STOTT: I'm hoping not, your Honour. It's just what comes through in that and whether or not additional reports need to be sought.

HER HONOUR: Okay. Well, I note that you were seeking an adjournment. What's the Crown application or Crown position?

35 HUGHES: Crown doesn't oppose it, your Honour.

HER HONOUR: Okay.

40 HUGHES: It seems relevant or probative on the sentence, potentially probative.

HER HONOUR: Yes. Are you seeking to cross-examine Emma Collins in relation to her report?

45 HUGHES: Your Honour, that would be subject to whether the, what's forthcoming from St John of God on that issue because as to the extent to which she predicates the report on that finding. I don't expect so at this stage but that may change if, depending on what future material is served.

50 HER HONOUR: Okay, well, we'll set a date down, Mr Tyler-Stott, but I'll give you four weeks.

APT:SND

TR66082

TYLER-STOTT: Thank you.

5 HER HONOUR: And if you do require more, you can let me know shortly. But let's try and get this resolved so I can basically be in a position to sentence him before the end of term.

TYLER-STOTT: Yes, your Honour.

10 HER HONOUR: It won't take me that long after I have all the material but I'd need probably a week or so. Yes, so, Mr Crown, the victim impact statements. Can I first ask you, is there a non-publication order in relation to the offender's name?

15 HUGHES: Yes, there is. Not the offender, I'm sorry, your Honour, no, no, there's not.

HER HONOUR: No. Just that it was in the court list as though it was, so I didn't think there was one in existence.

20 HUGHES: No, there's not.

HER HONOUR: You might just want to double inform the registry that that's not the case.

25 HUGHES: Yep.

HER HONOUR: Yes, so the victim impact statements, did you - I understand that <sup>Witness C</sup> wishes to read hers out?

30 HUGHES: Yes, your Honour.

HER HONOUR: And the other two victims would like someone to read it on their behalf?

35 HUGHES: Yes, your Honour, that's being a Ms Kelly Austen, from Corrective Services.

40 AUDIO VISUAL LINK COMMENCED AT 12.15PM

HER HONOUR: Right. Is that Ms Austen I can see now? Yes. Okay, Ms Austen, are you in a position now to read out - is it **Witness O**'s statement?

45 AUSTEN: Yes.

HER HONOUR: Yes. If you'd like to do so now. Thank you. Just take your time.

50 STATEMENT OF **Witness O** READ

.14/10/22

APT:SND

TR66082

HER HONOUR: Yes, thank you very much and thank you very much to <sup>Witness O</sup>  
. Yes, Mr Crown?

5 HUGHES: Your Honour, the next person who should be with Ms Austen is  
Witness K.

10 HER HONOUR: Yes, **Witness O**, I do now need to hear from <sup>Witness K</sup> with  
Ms Austen on her behalf, but thank you very much for being here and for  
giving your very powerful and emotional victim impact statement. Thank you  
very much.

Witness O: Thank you.

15 AUSTEN: I won't be a minute.

HUGHES: Your Honour, just while that's happening, I understand the next -  
as I've indicated, Kelly Austen will read the next one but that inmate is--

20 HER HONOUR: Kelsie or Kelly?

HUGHES: Kelly Austen.

HER HONOUR: Kelly.

25 HUGHES: But the next inmate is **Witness K**, who's at Clarence but it will be  
read by Kelly Austen.

HER HONOUR: Right, yes. Yes, thank you, Ms Austen.

30 STATEMENT OF **Witness K** READ

Thank you. Thank you very much. Yes, Mr Crown.

35 HUGHES: <sup>Witness C</sup> is an inmate of Clarence Correctional Centre at the  
moment, your Honour. As I say, she wishes to read it aloud.

HER HONOUR: Yes. Is that there with Ms Austen?

40 HUGHES: No, it's not.

HER HONOUR: Okay. Thank you very much, Ms Austen, for making yourself  
available and for reading those two impact statements to the Court. Thank you  
very much. Clarence is not on the call at the moment.

45 HUGHES: All right, we can telephone them, your Honour ...(not  
transcribable)...

50 HER HONOUR: Yes. We'll just sign off from you, then, Ms Austen. Thank  
you very much.

.14/10/22

7



APT:SND

TR66082

AUDIO VISUAL LINK CONCLUDED AT 12.29PM

5 HUGHES: Your Honour, just while that's happening, your Honour has noted the receipt of the Crown fact-finding document. I don't think I've handed that up.

HER HONOUR: No, you haven't. Thank you. If you could hand that up.

10 HUGHES: So I'll do that and--

HER HONOUR: You have a copy of that, Mr Tyler-Stott?

TYLER-STOTT: Yes.

15 HER HONOUR: But you are not in a position to agree or disagree at this stage?

TYLER-STOTT: That's right, your Honour.

20 HUGHES: Two copies there.

HER HONOUR: Well, I'll take that as a provisional tender at this stage.

25 TYLER-STOTT: Yes, your Honour.

HUGHES: Your Honour, there's two copies there. Your Honour will see a one-page document that's to be read in conjunction with the other. So the proposed facts for <sup>Witness N</sup> are incorporated in that other - sorry.

30 HER HONOUR: All right, yes, well, exhibit B and I'll do the one-page one exhibit B1.

35 EXHIBIT #B CROWN FACT-FINDING DOCUMENT TENDERED, ADMITTED PROVISIONALLY

EXHIBIT #B1 ONE-PAGE DOCUMENT TENDERED, ADMITTED PROVISIONALLY

40 Yes, whilst we're just getting that, I'll just read these quickly. And also for any press that are in the body of the Court, just please remember that there is a non-publication order for any of the victims, of any details that might identify them. Thank you. Yes.

45 AUDIO VISUAL LINK TO CLARENCE CORRECTIONAL CENTRE COMMENCED AT 12.37PM

Yes, <sup>Witness C</sup>?

50 <sup>Witness C</sup>: Hello.

.14/10/22

APT:SND

TR66082

HER HONOUR: Hi. I just cannot see you properly, only the top of your head. That's better. Okay, you would like to read your victim impact statement?

Witness C: Thank you, your Honour.

5

HER HONOUR: Yes, do you have it before you now?

Witness C: Yes, yep.

10 HER HONOUR: Okay. Just take your time and just when you're ready.

STATEMENT OF Witness C READ

Yes, thank you very much. Thank you very much.

15

Witness C: Thank you.

20 HUGHES: Your Honour, can I just indicate the person behind Witness C is Witness K. It had been anticipated that she would be listening in when hers was read, but your Honour might say something to it.

HER HONOUR: Yes. Yes, Witness K, I have also - Ms Austen read your victim impact statement on your behalf and we have listened to that and of course I will take that into account, and thank you very much for taking the time to write it. Thank you very much.

25

Witness K: Thank you.

AUDIO VISUAL LINK CONCLUDED AT 12.43PM

30

HER HONOUR: Mr Tyler-Stott, you are seeking to have the adjournment. Does 11 November suit?

DISCUSSION AS TO SUITABLE DATES

35

2pm on the 10th. Yes, we can do that. And then the submissions, Mr Crown, have you got written submissions?

HUGHES: I've got them in very much draft form.

40

HER HONOUR: All right.

HUGHES: So I can, I was going to say I could very soon after receiving the final material from the defence, I'd be able to put something--

45

HER HONOUR: Well, perhaps when you know the position as well in relation to the proposed facts so you know what you need to submit on, maybe.

HUGHES: Yeah.

50

.14/10/22

APT:SND

TR66082

HER HONOUR: But maybe I'll make a timetable in relation to that so I want this matter to conclude on the 10th in that way.

HUGHES: Yes.

5

HER HONOUR: If I can have any further material that is going to be relied upon by the defence by the Monday, Mr Tyler-Stott, of 5pm on 7 November.

TYLER-STOTT: Yes, your Honour.

10

HER HONOUR: And the response, if there is any, or the submissions, both written submissions, if they can be in to me by the close of business on Wednesday so I get a chance to read them before we come on at 2pm the following day.

15

TYLER-STOTT: Yes, your Honour.

HER HONOUR: Yes. Was there anything further then at this stage?

20

HUGHES: No, your Honour. Not for the Crown's part.

HER HONOUR: So what I'll do then, I'll adjourn this matter for the continuation of your sentence, Mr Astill, to 10 November at 2pm before me. I have the material so far and I have made the timetable as indicated. Do you wish to appear in person on 10 November?

25

OFFENDER: Yes, your Honour, I would.

HER HONOUR: Yes, I will order a s 77 in person. There's no other requirement for any AVL at this stage, Mr Crown?

30

HUGHES: No, your Honour.

HER HONOUR: If there is, you'll need just to let me know.

35

HUGHES: We will.

HER HONOUR: Okay, yes, thank you both for your assistance. I'll adjourn.

40

ADJOURNED TO THURSDAY 10 NOVEMBER 2022 FOR SENTENCE

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TR66082

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

5 JUDGE O'ROURKE SC

FRIDAY 24 FEBRUARY 2023

10 **2019/00026907 - R v Wayne Gregory ASTILL****NON-PUBLICATION ORDER RE IDENTITY OF COMPLAINANTS****PROCEEDINGS AFTER CONVICTION CONTINUED**

15 ---

AUDIO VISUAL LINK COMMENCED AT 2.13PM

20 HER HONOUR: Yes, I can see Mr Astill. Yes, Mr Tyler-Stott. So on the last occasion, being 14 October, the Crown tendered its material and you sought an adjournment for the gathering of subjective material.

TYLER-STOTT: Yes, your Honour.

25 HER HONOUR: So are you in a position now for the defence case? Is there anything further for the Crown case, Mr Crown?

30 HUGHES: Your Honour, there is. It's in anticipation of some particular material my friend intends to adduce. I've put him on notice that I will then tender a statement under the hand of Peter Graham Barglik, indeed a witness at trial, and your Honour will see it's a five-page document and there has been something deleted deliberately from para 8.

35 HER HONOUR: What's the date of the statement?

HUGHES: 13 October 2020.

HER HONOUR: Right. So it was part of the brief of evidence.

40 HUGHES: It was.

HER HONOUR: Any objection?

45 TYLER-STOTT: Your Honour, I understood it only to relate to para 8 and there was an amendment to para 8. If it's simply para 8, there can be no opposition to the tender.

HER HONOUR: So are you tendering it on the basis of me to consider para 8 only?

.24/02/23

1

APT:SND

TR66082

HUGHES: Yes, your Honour. The rest of it needs to be read only to put into context para 8.

5 HER HONOUR: Okay. So para 8 which has been redacted or amended in some way.

HUGHES: Redacted.

10 EXHIBIT #D STATEMENT OF PETER BARGLIK DATED 13/10/20 TENDERED, ADMITTED WITHOUT OBJECTION

HER HONOUR: Do you have a working copy, Mr Crown?

15 HUGHES: Yeah.

CLOSE OF CASE FOR CROWN

CASE FOR OFFENDER

20 TYLER-STOTT: Your Honour, I'm hopeful that your Honour has received some information or--

HER HONOUR: I have received some, yes.

25 TYLER-STOTT: --some documents. Your Honour, there should be a document index setting out documents 1 through 10. Would your Honour like me to read those onto the record?

30 HER HONOUR: Yes, just wait for a minute. Let me have a look. Firstly there was a six-document bundle and then that changed, did it? Let's go through the list to make sure I have everything. There's a report from Dr Frank Chow(?). He's a psychiatrist. Yes?

35 TYLER-STOTT: Yes, your Honour.

HER HONOUR: And it was dated--

TYLER-STOTT: 16 February.

40 HER HONOUR: Yeah, 16 February this year.

EXHIBIT #1 REPORT BY DR FRANK CHOW DATED 16/02/23 TENDERED, ADMITTED WITHOUT OBJECTION

45 EXHIBIT #2 REPORT BY EMMA COLLINS DATED 6/10/22 TENDERED, ADMITTED WITHOUT OBJECTION

50 EXHIBIT #3 TEN PAGES OF DOCUMENTS FROM SUBPOENA MATERIAL FROM CORRECTIVE SERVICES TENDERED, ADMITTED WITHOUT OBJECTION

.24/02/23

2

APT:SND

TR66082

Yes, I've read that material. CP inmate. Is that the same as PRNA?

TYLER-STOTT: I don't know, your Honour.

5

HER HONOUR: He's returned to by the acting governor as a CP inmate, not as a PRNA, sorry.

TYLER-STOTT: Your Honour, I will take that question on notice.

10

HER HONOUR: And that's on 2 February 2023. He hasn't elaborated what that means in the document.

EXHIBIT #4 TWO-PAGE LETTER FROM TANYA HOCKING(?) TENDERED,  
15 ADMITTED WITHOUT OBJECTION

EXHIBIT #5 TWO-PAGE LETTER FROM GUY VICKERS(?) TENDERED,  
ADMITTED WITHOUT OBJECTION

20 TYLER-STOTT: Your Honour, the reference from Andrew Dennington(?) is no longer pressed.

HER HONOUR: Not pressed. Yes.

25 EXHIBIT #6 REPORT OF DR PILLAI(?) TENDERED, ADMITTED WITHOUT OBJECTION

And the letter of the offender. Any objection?

30 HUGHES: Your Honour, I don't object but I will be reminded your Honour of what Justice Bellew said in Lai [2021].

HER HONOUR: He also made comments about the Crown not objecting, but, yes, I'm familiar with that case.

35

HUGHES: Yes.

EXHIBIT #7 LETTER FROM OFFENDER TOGETHER WITH HIS  
40 HANDWRITTEN NOTES AND THE TYPED VERSION TENDERED,  
ADMITTED WITHOUT OBJECTION

TYLER-STOTT: There's just two character witnesses to be called, your Honour.

45 HER HONOUR: Yes.

TYLER-STOTT: The first of whom is Cathy Haora.

APT:SND

TR66082

&lt;CATHY HAORA, SWORN(2.22PM)

&lt;EXAMINATION-IN-CHIEF BY MR TYLER-STOTT

- 5 Q. Ma'am, can you please tell the Court your full name.  
A. Cathy Louise Haora.
- Q. And what is your age?  
A. 61.
- 10 Q. How do you know Wayne Astill?  
A. I met Wayne 30 years ago. I live around the corner from him.
- Q. You're aware that he's been found guilty--  
15 A. Yes.
- Q. --of several serious sexual offences?  
A. Mm-hmm.
- 20 Q. As well as having pleaded guilty to some misconduct offences.  
A. Yes.
- Q. Did you live in close proximity to Mr Astill?  
A. Ys.
- 25 Q. Did you come to know him through your children?  
A. Yes.
- Q. Did you know his wife Margaret?  
30 A. Yes.
- Q. How long did you know Margaret?  
A. I knew Margaret from, I've known Wayne for 30 years so I would have known Margaret for the same.
- 35 Q. Were you aware of the diagnosis?  
A. When she got it, yes.
- Q. And was that around 2005 or thereabouts?  
40 A. Yeah. I can't remember exact year, date.
- Q. Did you have much to do with Margaret following that diagnosis?  
A. Um, I used to go and see her, yeah. Ah, she stopped work a while later and she was at home. Yeah. I used to go and see her.
- 45 Q. And what did you observe about her over the time that you were interacting with her?  
A. Um, she was devastated of course by the diagnosis. Slowly, slowly she started not being able to move. Um, but overall she was quite, she just  
50 accepted what she had to do and tried to get on with it.

.24/02/23

4

HAORA XN

APT:SND

TR66082

Q. Did you speak to Wayne Astill about the diagnosis?

A. Um, not that day but over the years when, um, Margaret was alive, still alive, yes.

5

Q. And what did he tell you about the diagnosis?

A. He said that she would, what he, he knew, she would start slowly getting less movement and in the end it would be basically I think it's, it's not a disease you can come back from.

10

Q. Did you see whether or not that had any impact on Mr Astill?

A. Yes, but he kept it inside himself.

Q. What makes you say that?

15 A. Because he's not a person that bitches and complains about things. He just gets on with it.

Q. Were you around when Margaret passed away?

A. I was around, yes.

20

Q. Did you have anything to do with Wayne around that time?

A. Um, no. I just sent him by commiserations and we just, because I went to see Margaret in the nursing home as well and, um, he couldn't really even speak about it, to tell you the truth.

25

Q. Which nursing home are you referring to?

A. Um, the one up the Central Coast somewhere up there.

Q. Now, prior to Margaret's passing, what were your observations about Mr Astill and his character?

30

A. Um, like I said, I've known him for 30 years. I've been on rides with him on his bikes. I've let my kids play there and I've never, I was trying to think, have I ever heard him raise his voice even? I've never heard him raise his voice, not even to his own children, no.

35

Q. And how did he treat you?

A. Good. Perfect, just like a mate.

NO CROSS-EXAMINATION

40

<THE WITNESS WITHDREW



APT:SND

TR66082

&lt;GARY LANE, AFFIRMED(2.28PM)

&lt;EXAMINATION-IN-CHIEF BY MR TYLER-STOTT

- 5 Q. Your name is Gary Lane.  
A. Correct.
- Q. And Gary with one R.  
A. Yes.
- 10 Q. How old are you, sir?  
A. 66.
- Q. And you live in Revesby?  
15 A. Currently, yes.
- Q. How long have you known Wayne Astill?  
A. Oh, the best part of 62 years.
- 20 HER HONOUR
- Q. How many, sorry?  
A. 62.
- 25 TYLER-STOTT
- Q. You started kindergarten together?  
A. We did, yes.
- 30 Q. You went to high school together?  
A. Yes.
- Q. Played sport together?  
A. Yes.
- 35 Q. And did you keep in touch over the years?  
A. We have done, yes.
- Q. In around 2000 were you still in contact with Mr Astill?  
40 A. We've always been in contact.
- Q. How often are you in contact, or were you in contact?  
A. Ah, we've always been in contact. Um, there has been periods of times  
45 when we haven't sort of, um, caught up or been in contact because of different  
situations but we've always, um, remained in contact.
- Q. And did you know Margaret?  
A. I did know Margaret, yes, I was at their wedding.
- 50 Q. Did you go to her funeral as well?

.24/02/23

6

LANE XN

APT:SND

TR66082

A. No, I didn't. I, Wayne rang me up when Margaret's funeral was on. I was in Melbourne at the time so I didn't go.

Q. Did you know about Margaret's diagnosis of--

5 A. I did know, yes.

Q. Did you have anything to do with Margaret whilst she was suffering from that disease?

10 A. I seen Margaret a few times at their place, um, in Bligh Park when she was, um, first diagnosed and she was, started to deteriorate. Um, but every time I went there, um, she was always there but she was sort of bedridden. Um, but I never seen Margaret when she was in the nursing home.

Q. Do you know who was providing care to Margaret?

15 A. Whilst they were at Bligh Park?

Q. Yes.

20 A. Um, Wayne and Tanya, as far as I was, oh, as far as I knew, to the best of my knowledge.

Q. Do you know that Mr Astill has been found guilty of a number of serious sexual offences?

A. I do know, yes.

25 Q. That he pleaded guilty to a number of misconduct charges?

A. Yes.

Q. Prior to, say, 2016, what were your observations of Wayne Astill as husband, as a father and as a carer?

30 A. Um, I've never had any issues with Wayne. We've, um, we've always remained close, um, been to each other's wedding, um, always remained in touch. Um, I've got no issues with, um, Wayne whatsoever.

Q. What was he like as a father?

35 A. Very good, yeah. He's, um, had Brad, um, his son Brad. Margaret had Jodie(?) and I've never seen Wayne have any issues with either of the children.

HER HONOUR

40

Q. What do you mean by that? What do you mean by he had Brad and she had--

A. Jodie was Margaret's child, not Wayne's.

45 TYLER-STOTT

Q. You mean Jodie was brought to the marriage. Is that--

A. Yes, but as far as I'm, I, to the best of my knowledge, Jodie steel keeps in touch with Wayne.

APT:SND

TR66082

Q. Has Wayne done anything for you over the years?

A. As far as?

5 Q. Helping you out in any way.

A. Yeah, quite a few times, yes.

Q. How has he done?

10 A. Um, he's been there if I've needed him. Um, when I first moved into my very first house out at Campbelltown I needed a lot of sort of yard work done 'cause it was, um, a brand new house, and, um, quite often he'd come over and, um, give me a hand to do a bit of excavation work or gardening and help me with the lawns, 'cause I had to put all new turf down, and things like that. Yeah, no, he was always there if I asked him.

15

<CROSS-EXAMINATION BY MR HUGHES

20 Q. Mr Lane, knowing as you do that Mr Astill has been during his time as a senior prisoner officer sexually assaulted a good number of women, it is fair to say he is not the man you believed him to be?

A. Ah, it was very hard to take, but, um, when I found out what had happened. Um, I just couldn't believe it. Ah, it just wasn't in his nature.

25 Q. Well, you understand, and as Mr Tyler-Stott reminded you, that he's been found guilty of a number of charges--

A. I do.

Q. --sexual offences, yes?

30 A. Yes.

Q. And he's pleaded guilty to misconducting himself in serious way as a prison officer, senior prison officer, yeah?

A. I do know that, yes.

35 Q. Well, when you say you just couldn't believe it, you accept, don't you, that Mr Astill was in fact, when you're giving your evidence about his character, you're describing a man who was in fact sexually assaulting women in gaol?

A. Well, I'm coming to live with that, yes.

40 Q. And you don't maintain that he's a good bloke knowing that, do you?

A. Well, I'm not going to give up on him because of that.

Q. You'll stick to him to the end?

45 A. I will, yes.

Q. Regardless of what he's done?

A. Yes.

NO RE-EXAMINATION

APT:SND

TR66082

&lt;THE WITNESS WITHDREW

CLOSE OF CASE FOR OFFENDER

5

TYLER-STOTT: Hopefully your Honour has received two sets of written submissions.

10

HER HONOUR: Have they been amended?

TYLER-STOTT: One, yeah, was ...(not transcribable)... sent incomplete, your Honour. That has been rectified.

15

HER HONOUR: Which one is the amended one?

TYLER-STOTT: 24 February, submissions on the subjective case.

HER HONOUR: Right.

20 MFI #1 OFFENDER'S WRITTEN SUBMISSIONS ON SENTENCE

A couple of things. Dr Chow's report, a lot of the material, or a lot of times he says one should see forensic psychiatrist, what I'm suppose getting to the nub of is how helpful is Dr Chow's report, particularly so when he, as you have concluded in your submissions at para 9:

25

30 "The offender's description of his frame of mind in the offending period. He said all the incidents happened throughout 2016 to 2019. He said there were female inmates becoming close and familiar with him. Those interactions eventually led to sexual relationships. He said he was not thinking straight during that period."

35 For a start, that is the situation in accordance with the jury's verdict. Dr Chow neither seemed to have challenged him about that, questioned him about that in light of the fact of the jury's verdicts and the convictions in relation to all the other offending, and then, "He suffered significant grief after the death of his wife. He was in a dark place on his own. He was losing his judgment. He was not thinking of the consequences." So what am I supposed to make of that?

40

TYLER-STOTT: Your Honour, the conditions that he was diagnosed with, being PTSD and major depressive disorder, were impacting his judgment at the relevant times.

45 HER HONOUR: But his judgment still maintains today that all those relationships were consensual. So how helpful is it and what can I take from it? That's not maintaining that there was sexual intercourse without consent or touching without consent. That was framed as, "Oh, yes, I was in a dark case so it led to having and conducting relationships with women behind the bars that were inmates and I exercised poor judgment." That's not the situation.

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TR66082

That may be position that he still obviously maintains but that's not the position he's being sentenced on.

5 TYLER-STOTT: No. No, indeed, your Honour. Your Honour, the diagnoses and his prior history, that is he was, led an otherwise blemish-free life up until 2016 is a matter that I'd ask your Honour to take into account. Something's happened. The death of his wife occurred in 2016 which seems to be around the genesis of--

10 HER HONOUR: Well, let's take that. That must have been obviously of some distress, but also let's put into context and let's not pretend that he wasn't having a relationship with someone from 2006 under the rose of his wife who clearly did not want him to be having a relationship in her own house. So I note none of the questions were directed towards that from the character  
15 witnesses. So, yes, of course that would be distressing and the whole period of having your wife slowly die would be awful, but we cannot ignore the elephant in the room here.

20 TYLER-STOTT: Your Honour, but that is not something that I, respectfully submit, reflects on or changes the fact that the conditions and the death of his wife came very close to the offending period being 2016, 2019. It is a feature that I'd ask your Honour to take into account in perhaps trying to divine why it is that these offences took place.

25 HER HONOUR: Well, it would be able to be made more sense of, I suppose, and accepted more readily, if there was some acceptance of what he has actually done and not the maintaining of consensual relationships of women behind bars.

30 TYLER-STOTT: Indeed, that's so, your Honour. Nevertheless, it's something--

HER HONOUR: I'm not saying I'm ignoring it, but I'm saying it doesn't have quite the weight that it would if someone who was coming before me,  
35 acknowledging what they have done and the pain they have caused the victims who were vulnerable and trapped and his position of authority.

40 TYLER-STOTT: Yes, and I think I make that concession, your Honour, within my submissions. The extent to which your Honour takes it into account is obviously open in light of his denial of--

45 HER HONOUR: And clearly it's not an aggravating feature, his denial. He's quite entitled to have it, but it does mean that there's no evidence of remorse except for the plea of guilty for the misconduct charges.

TYLER-STOTT: That's accepted, your Honour.

HER HONOUR: And there's also concerns for his rehabilitation.

50 TYLER-STOTT: That's so.

APT:SND

TR66082

HER HONOUR: But, yes, what else would you like to say?

5 TYLER-STOTT: Well, your Honour, it goes on in my written submissions to  
address the pleas of guilty. Mr friend has set out the various discounts at para  
68 of his written submissions. I've said in my submissions that his remorse  
only really extends to the pleas. And your Honour would see that within his  
own letter he's described the behaviour that he's admitted to as appalling and  
unethical behaviour.

10 HER HONOUR: But still on the basis that he was engaging in consensual  
sexual acts.

15 TYLER-STOTT: Yes. So there's a limited degree of insight and therefore  
obviously a limited degree of remorse that can be taken into account there,  
your Honour. Your Honour would see that I don't advance prospects of  
rehabilitation as a head of mitigation. As far as the risk of reoffending, your  
Honour, Dr Collins assessed him at low risk of reoffending. The sentencing  
assessment report does the same. It also talks about low to medium. I'd  
20 submit that given the loss of his employment, the time--

HER HONOUR: Well, he's not going to have the opportunity to do so.

25 TYLER-STOTT: Exactly. Exactly. So the risk of reoffending must be low.  
Your Honour--

HER HONOUR: What are you submitting in relation to his handwritten letters  
and his custodial conditions? 'Cause a couple of things about that, (a) what is  
a CP classification as the more current position is, from the acting governor  
30 where he is stationed, or incarcerated, but, secondly, people on remand are  
treating differently to people who are sentenced, so what do I make of it?  
Because the letter that you tendered didn't seem to the extent that it has been  
articulated, because it was saying that he was out of cell from 7.10 to 14.45 or  
something.

35 TYLER-STOTT: On his own letter, yes, your Honour.

HER HONOUR: Yes.

40 TYLER-STOTT: Your Honour, but that's by himself?

HER HONOUR: I wouldn't call that overly onerous.

45 TYLER-STOTT: It is onerous in terms of the fact that he's not allowed to  
associate with any other prisoners by virtue of--

HER HONOUR: But he's asked for that as well because of the nature of his  
previous employment and the like.

APT:SND

TR66082

TYLER-STOTT: And that's so, your Honour, and probably wisely. And, your Honour, that's something that has been sanctioned by the governor and consequently it will be a very lonely sentence.

5 HER HONOUR: Is that going to be maintained though once he is a sentenced prisoner and not be housed with people who are of similar, in a similar situation?

10 TYLER-STOTT: Your Honour, I'd say on the evidence that is before your Honour, that is a finding that is open to be made.

HER HONOUR: How? Where do I find that?

15 TYLER-STOTT: Well, he's not to associate with any prisoners.

HER HONOUR: If you look at the most recent one, 'cause the others are all dated when he was basically early on in his remand period but the one that you've tendered, exhibit 3, 'cause it states also that he was formerly managed as a PRNA. Do you have any information as to what a CP classification means?

20

TYLER-STOTT: Currently from my instructing solicitor beside me, your Honour. As I understand it it is someone who's only referred to by their number for safety.

25

HER HONOUR: But that happens to all of those within the custodial setting he's in now.

TYLER-STOTT: As opposed to a MIN number. Yes, your Honour. He is not known by name. There's no reference to his name, your Honour, and that's clearly as a result of the risk that the Corrective Services believe is presented to the offender.

30

HER HONOUR: I'm just saying I've got nothing before me that says to me what's going to happen after I sentence him. I'm not going to sentence him today. There's too much that I need to look at. But perhaps you can, if you wish to press that point, I want more information, more evidence on that.

35

TYLER-STOTT: I understand that, your Honour, thank you. But insofar as the time that he's spent in custody at this stage, it's been quite onerous.

40

HER HONOUR: Yeah, so the period has been on remand, it's been quite, he's been on his own.

45 TYLER-STOTT: Your Honour, there's the finding of special circumstances I'd say that's open for the facts that I've enumerated at para 19 of the submissions and--

50 HER HONOUR: Which one? I haven't got para 19. Is that in the other submission?

APT:SND

TR66082

TYLER-STOTT: Your Honour, I'll--

5 HER HONOUR: Oh, yes, so that's in relation to, sorry, yes, the amended ones, yes.

10 TYLER-STOTT: The accumulation of sentences, the first custodial offence, mental health conditions as well as the conditions which I will develop. And then obviously at paras 20 and 21, the sentence will no doubt be severe but I ask him to be one that does not deprive him of some hope once he is released. The other submissions that I've provided to your Honour address the Crown's initial fact-finding document.

15 HER HONOUR: Yes, I have those.

MFI #2 RESPONSE TO THE CROWN'S FACT-FINDING

20 I haven't read these yet. Is there any specific aspect which is disputing or challenging the fact-finding of the Crown?

TYLER-STOTT: There are, your Honour.

HER HONOUR: Can you take me to those?

25 TYLER-STOTT: Count 4, your Honour, para 7, just the extent to which the accused laid his hands on the victim of that offence, noting the absence of reference to a specific area within her statement. Your Honour, that's elaborated over paras 7, 8 and 9 of those submissions. Again, count 6, your Honour. It's a similar complaint. Paragraph 12. As to count 7, I've  
30 characterised the enumerated points in the Crown's document as heads of conduct. Your Honour, it's open to conclude that 1, 2, 3 and 4 are able to be proved to the requisite standard but as far as 4 is concerned, that he did not aggressively intervene for the complainant to keep the ring. I've identified why that is at para 14. As to head 5, and that is the number of kisses. I just ask  
35 your Honour to take into her evidence which was that it was attempted and actual more than three but less than six, which would also include count 2.

40 Regarding head 6, multiple times is somewhat unclear, so when your Honour's sentencing for that particular fact, I'd ask your Honour to take that into account. As far as head 7, that relates to when the victim found out that her brother required surgery. He wasn't at work that day. Your Honour may remember that from exhibit V, p 13. And obviously, and my friend has referred to in his submissions, the double punishment. That is a risk that your Honour would no doubt be cautious to avoid. Count 14, as I've said, your Honour, it's largely  
45 agreed that the summary is consistent with the verdict of the jury and able to be established beyond a reasonable doubt. The only contention is, I suppose, the pointing to the vagina asking her to expose her vagina from the other side of a prison door with a small window. I'd ask your Honour not to find that fact beyond a reasonable doubt. That seems to be an opinion, although it's



APT:SND

TR66082

accepted that, clearly in line with the jury's verdict, the breasts were sought to be seen.

5 Counts 22 and 23, obviously that concerns Witness H , and I've set out  
an alternate position other than the one advanced by the Crown as far as how  
the jury arrived at their conclusion for these counts. And, your Honour, what  
I've asked your Honour to take into account was that the victim on this  
10 occasion had been sentenced and she was experiencing pain and bleeding as  
a result of her endometriosis and it would potentially be open to find that the  
relationship between Witness H and the offender had changed by that time.  
Count 24, the only challenge is really the cup containing seminal fluid and  
whether or not your Honour would be able to find beyond a reasonable doubt  
that that took place, notwithstanding her complaint to Mr Vergo. But count 26,  
15 your Honour, paras 30, 31, Witness O , she was somewhat vague initially  
about where the offender had touched her. She said that, "I think was trying to  
touch me inside the clothes," but went on to say that she was touched on the  
vagina. I submit that potentially there is a doubt about whether or not he did  
touch her on the vagina, notwithstanding the fact that he was found guilty of  
20 the offence which could be constituted by lesser conduct.

Moving through, your Honour, the large majority of the counts, leading up to  
count 42, I've effectively accepted that the summary as put forward by the  
Crown is able to be established. Count 42, this relates to Witness N , and I've  
set out the basis upon which the Crown has proved this particular case.  
25 Obviously there was evidence in count 42 relating to counts 39 through to 41  
that were ultimately verdicts of not guilty which leaves then the provision of  
Dencorub and provision of tobacco as far as the alleged misconduct is  
concerned. Witness N , as I've said in my written submissions, said that she  
told Ms Berry and provided the Dencorub as opposed to the  
30 accused. That is potentially a basis that your Honour may not accept that the  
Dencorub was provided by the offender. However, that leaves then only the  
provision of tobacco as a pathway to the finding of guilt for that particular  
count. I've set out at paras 46 and 47 as to why your Honour might dismiss  
the 166 matters relating to Witness N . And then largely, your Honour, the  
35 facts as contended by the Crown as consistent with the verdicts and open to  
be established on the requisite standard.

40 HER HONOUR: If you wish to rely on that submission in relation to custodial  
setting and the like you'll need to give me some more evidence.

TYLER-STOTT: Thank you, your Honour.

45 HUGHES: Your Honour, can I turn to a topic which I did not address in any  
detail in my outline of written submissions because some of them weren't, I  
had not received it at the time.

MFI #3 CROWN OUTLINE OF WRITTEN SUBMISSIONS

HER HONOUR: They're the ones dated 22 February this year?

.24/02/23

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(TYLER-STOTT)(HUGHES)

APT:SND

TR66082

HUGHES: Yes, your Honour. I'll come back to what I'd indicated at the time of tender of the offender's material, specifically the handwritten letters, and I know your Honour is more familiar with Lai in Justice Bellew. Can I remind your Honour of what was said and the significance of me raising my challenge or making of comment when I did with respect to the tender of that material. So would your Honour bear with me if I read from Justice Bellew's judgment at para 79:

10 "Finally, as I'd noted, both the applicant and Wu(?) chose to tender in their respective cases on sentence, a statement to the sentencing judge. Each did so in the absence of giving sworn evidence. In circumstances where such a practice appears to be increasingly adopted in sentence proceedings in the District Court, it is timely to reiterate the observations of Whealy J, as his Honour then was, in R v Elfar(?). The matters of principle stated in McGourty and Qutami are plainly important. They require an emphatic endorsement by this Court. Indeed, it needs also to be further emphasised that this principle extends not only to statements in psychological reports but also to statements by offenders in pre-sentence reports ...(not transcribable)... Palu(?). In addition, the current practice of tendering a note or letter from an offender in sentencing proceedings attracts the same admonishment. Considerable caution should be exercised in reliance upon such exculpatory material where there is a matter in dispute and where no evidence is given by an offender or other direct evidence is not placed before the Court. The essential reason for treating the material in that way is precisely because it remains untested. Indeed, where the Crown has either objected to the tender of this type or material or has made it clear either at the time of tender or in submissions, are made, little or no weight should be placed upon the material that the sentencing court would be entitled to treat the material as being of little or no weight, indeed an appropriate case it ought to do so."

His Honour continued:

35 "There is in my view no utility in adopted a practice of tendering a statement in the absence of sworn evidence in circumstances where this Court has made it abundantly clear that little or no weight should be attached to its contents. It follows that, in my view, such a practice is to be strongly discouraged."

Now, on this issue, which your Honour would know has been around a long time so far as Qutami and Palu and Justice Wilson's judgment in Bellhorne(?), last year in a case where a psychological report was tendered in Lloyd, Justice McCallum said that what was said in Palu and Qutami was not capable of being legal principle. Now, with great respect to her Honour, it may well be that her Honour is right about that. I say it may be because there's other judges who say that it is a matter of principle. But assuming for abundant caution that it's not a matter of legal principle, it's eminently sensible that your Honour would, with respect, be greatly cautious in such a case, and that is a

.24/02/23

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(HUGHES)

APT:SND

TR66082

very good example of why. In this case the letter of the offender speaks to how sorry he is for his appalling and unethical behaviour.

5 HER HONOUR: But that can only relate to the misconduct charges in any event that he pleaded guilty to.

HUGHES: In any event, that's right, but when your Honour--

10 HER HONOUR: And I suppose overarching that he would engage to his mind, or what he states is to his mind, consensually with inmates, but it's not to the offender per se. It can't be because he doesn't admit it.

15 HUGHES: No, that's right, so there's remorse for that which he doesn't admit, plainly enough. But he goes on to, in the words of Mr Kyle, the community corrections officer, victim blame, and at one stage in the report even says, well, that the women got some pleasure out of it themselves. So this is a man who it could not be thought is in any way genuinely contrite for what he has done. Indeed, his pleas of guilty to those matters which he's pleaded, and I've said in my submissions, might well be thought to be simply the product of a  
20 recognition of the inevitable. He's caught on recordings. Mr Brunwall, your Honour might recall he gave some evidence from North England, he corroborated some of what was said in the recordings in the sense that he admitted to having sexual relations with some of these women. So of course he could have pleaded not guilty but your Honour would be entitled to view  
25 those pleas in the way that I have suggested, simply evidence not of contrition but recognising that he was bang to rights, as it were, with respect to those matters. But overwhelmingly, in any event, he's pleaded not guilty to those trial matters and been found guilty.

30 There's some character evidence. I won't spend long on this, but, your Honour, Mr Lane, really, Mr Lane might get points of loyalty, and it's not to be disrespectful to him, but he's said, well, he might think quite frankly, "Well, I'll stick with him whatever. He's a mate. He's going to be a mate for life." Your Honour could respectfully attach little weight given the quite open level of  
35 undying loyalty that Mr Lane gives. Ms Hocking, with great respect to her, simply describing Mr Astill as kind and generous and he works, what she would have the Court believe, good works, in the Court is utterly at odds with the preponderance of evidence, no, the overwhelming evidence, not just the criminal conduct but his conduct generally in the workplace.

40 So much for the impact of any then existing mental illness, Mr Astill, your Honour will recall, managed to get promoted to a very senior rank in 2017, so any impact on his functioning didn't prevent his ascension within the Corrective Services. Your Honour, I've set out in the outline of submissions, with much  
45 assistance from Ms Stewart, I should say, the various findings which your Honour would make. Just one comment. So far as Ms Berry's evidence about this exchange where Mr Astill is said to have angrily said, "Give Witness C back her ring," your Honour would recall (1) she's a professional person in that setting. It's something that one might expect she would remember and not be  
50 mistaken about, and that another officer didn't give that evidence does not

.24/02/23

16

(HUGHES)

APT:SND

TR66082

undermine it. Your Honour would accept Ms Berry is an honest witness who's very unlikely to be mistaken about such an extraordinary exchange given the respective positions and Witness C's role in it. Your Honour, I've referred to that very recent judgment of KM about finding objective seriousness, and it might have struck your Honour as strange that I then went on with a statutory offence, to use that terminology. Justice Button is not saying it can't be used, that terminology, and it certainly--

HER HONOUR: Oh, this argument or this position, two alternate positions have been around for several years. People do it err on the side of caution I think mostly, but I find it myself, not that that matters too much, but I find it myself, seems ridiculous, to be honest, but--

HUGHES: I do recall as--

HER HONOUR: They're very difficult to characterise as low, medium and high or whatever.

HUGHES: Yeah. And there has been criticism of where, well, the top of, just below middle range but not the bottom. What does it mean?

HER HONOUR: Yeah, what does it mean, but yes.

HUGHES: Your Honour might recall before ...(not transcribable)... the sentencing law seemed to work perfectly well without that terminology, but in any event. That perhaps is what we're going back to. Your Honour, with respect, generally though as to the objective seriousness with common law offences here, in general terms those involving sexual relationships your Honour would, those offences where that was a feature of it, your Honour might find--

HER HONOUR: It has to be more serious and more significant.

HUGHES: It has to be more serious, yes, and I've included other statutory offences which might give your Honour some guideline, but as I said, I'll say again, obviously your Honour has to avoid double counting. But they are two very different roles. Statutory offences are very serious crimes against the person and the sexual relations whether consensual or not with female inmates is a very serious breach of the public trust. So they are two wrongs being addressed, and it's for that reason that Mr Astill was prosecuted for both. I just note that there is a typo in the second last line, your Honour, of my submissions. I've got the very people apt to be less, it should be less trustful of authorities. But this is the rub here with this particular offence. Of the common law offence can apply to public officials working at the RTA or RMS or wherever. He's in a position where he's dealing with these most vulnerable people. He owes it to the community to rehabilitate these people. So that's the gross breach of the public trust right there. And he's sending effectively, a lot of these women would go back into the community speaking to people from their own group, milieu, and saying, "This is what happened to me," not, "Oh, well, the law is right and we should live within the law," but, "Even those in

.24/02/23

17

(HUGHES)

APT:SND

TR66082

charge, a very serious person, well, he will do whatever the hell he likes and get away with it and we're helpless." The punishment, it goes without saying. I'm not going to lecture your Honour but the punishment for these women was the loss of their freedom, taken away from their family or from their children,  
5 not to be preyed upon by Mr Astill in this most vile matter which seems to have become almost a routine for him. Your Honour, there are those s 166 matters, two of them I proceed on.

10 HER HONOUR: Well, it's not going to affect the sentence overall a great deal either way, but on a practical level of imposing an aggregate sentence.

HUGHES: Yes, your Honour.

15 HER HONOUR: But I'll have to go through the evidence again in relation to those two aspects. There's two, isn't there, on the 166, of intimidation?

HUGHES: I'm proceeding on the two, and there's one which I will withdraw. It's the unlawfully delivered tobacco. It's a backup offence. So on the certificate it's sequences 30 and 32, intimidating Witness B in the first  
20 instance and then intimidating Witness N .

HER HONOUR: What do you say in relation to the submissions by Mr Tyler-Stott in relation to the jury's non-acceptance of her evidence in relation to the counts that concerned her?  
25

HUGHES: Witness N? That may concern your Honour as well.

HER HONOUR: I just need to read it all and come to my sentence, but I don't want, having this held over. How long do you think you'll need if you're going  
30 to rely upon some further evidence, Mr Tyler-Stott? It can be, if you obtain it, send it to the Crown first to see if there's any issue with it. If there's no issue with it I can receive it over email.

35 TYLER-STOTT: Seven to ten days I'm told perhaps is the turnaround, your Honour.

HER HONOUR: All right. Well, let's say two weeks. So let me say three weeks for sentence.

40 DISCUSSION AS TO SUITABLE DATES

So, Mr Astill, I'll be sentencing you at 2pm on 31 March 2023. I just want to look over all the material and just need to spend a little bit of time on it, okay.

45 OFFENDER: Your Honour.

HER HONOUR: Until then, remanded in custody, bail not applied for, formally refused.

50 AUDIO VISUAL LINK CONCLUDED AT 2.00PM

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18

(HUGHES)

APT:SND

TR66082

ADJOURNED TO FRIDAY 31 MARCH 2023 AT 2PM

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REVISED

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

JUDGE O'ROURKE SC

FRIDAY 31 MARCH 2023

**2019/00056907 - R v Wayne Gregory ASTILL****NON PUBLICATION ORDER IN RELATION TO THE NAMES OR  
\*ANYTHING THAT MAY IDENTIFY THE VICTIMS IN THIS MATTER****SENTENCE**

HER HONOUR: The offender Wayne Astill, born 14 September 1956, was, following a jury trial at Sydney District Court between 27 July and 25 August 2022, convicted by a jury of his peers on 25 August 2022 of the following offences;

Five counts of aggravated sexual assault without consent, contrary to s 61J of the *Crimes Act* (Counts 28 to 31 and count 44) which each carry 20 years imprisonment with a standard non-parole period of 10 years;

Fourteen counts of aggravated indecent assault, contrary to s 61(M)(1) of the *Crimes Act* (counts 2, 4, 6, 8, 9, 23, 25 to 27, 34, 35, 49 and 50) which each carry seven years imprisonment with a standard non-parole period of five years;

Three counts of aggravated act of indecency, contrary to s 61O(1A) of the *Crimes Act* (counts 5, 14 and 22) which each carry a maximum penalty of three years imprisonment; and

Five counts of misconduct in public office contrary to the Common Law (counts 10, 33, 42, 45 and 51) where there exists no maximum penalty in statute.

Further, the offender, prior to his trial, pleaded guilty to seven further

RSB:SND

counts of misconduct in public office (count 7, 24, 32, 36, 37, 38 and 43 on the indictment). He is statutorily entitled to a 10% discount for count 7, 24, 36, 37 and 43, pursuant to s 25D(2)(b)(i); to a 10% discount for count 38, s 25D(3)(b)(i); and a 25% discount for count 32, an ex officio count pursuant to s 25D(3)(a).

The jury returned not guilty verdicts to 17 counts on the indictment. Counts 1, 11, 12, 13, 15, 16 to 21, 39, 40, 41, 46, 47, and 48.

There are two further matters to be considered - two related matters on a 166 certificate sequences 30 and 32) of;

Intimidate S, between 1 April 2017 and 13 February 2019, which carry a maximum penalty of five years; and

Intimidate N between 19 January 2018 and 6 July 2018.

I note the Crown withdraw the third matter on a 166 - sequence 33, as it was a backup offence.

The offences were committed between the August 2015 and October 2018 upon 13 victims - noting count 37 refers to two victims.

The offender was arrested and charged on 20 February 2019. The matter was committed for trial on 5 December 2019, from the Penrith Local Court after the offender pleaded not guilty to all charges in the Local Court.

On 7 February 2020, the offender was arraigned and pleaded not guilty to all 33 counts (as the indictment was the framed), and a trial was set for 19 October 2020.

On 3 September 2020, the DDP lay five ex officio charges. On 1 October 2020, the offender indicated he would plead to five counts of misconducted. His trial was not reached on 19 October and was relisted to commence on 2 August 2021.

.31/03/23



RSB:SND

On 16 July 2021, the offender indicated he would plead to seven counts of misconduct and entered those pleas on 3 August in the Sydney District Court.

The matter did not proceed in August 2021 due to COVID restrictions and was given a further date of 25 July 2022.

On 26 July 2022, the offender was arraigned before the jury panel and pleaded guilty to seven counts of misconduct in public office and not guilty to the remaining 44 counts.

The offender has been remanded in custody since the jury returned with its verdicts of guilty. The ultimate sentence imposed will be back dated to the date he went into custody on 25 August 2022, plus an additional day taken into account to reflect the day spent upon arrest and charging. Thus, the sentence will be back dated to have commenced on 24 August 2022.

On 14 October last year, the Crown tendered a sentence bundle comprising a copy of the indictment, proposed facts - exhibit B, a s 166 certificate, agreed facts for counts 37 and 43 - which was exhibit L in the trial, and agreed facts in relation to count 38 - which was exhibit Y in the trial, his custodial history and criminal history, of which there is none, a Sentence Assessment Report - exhibit C, and the Victim Impact Statements, (three of them) were read to the Court.

In relation to the facts of the matter, where, as here, the offender has been found guilty after a trial by jury, it is the Court's duty to make findings as to the relevant facts, subject to the primary constraint that such facts as found must be consistent with the verdicts of the jury: *R v Isaacs* (1997) 41 NSWLR 374.

Findings made against an offender must be arrived beyond reasonable

RSB:SND

doubt. Matters which the offender relies upon to mitigate his offence must be proved by him on the balance of probabilities *The Queen v Olbrich* [1999] HCA 54; 199 CLR 270 at 281 [27].

Regard must be had, necessarily, to the evidence adduced at trial, the way in which the Crown put its case, the position taken on behalf of the offender and the directions given to the jury. The Crown prepared facts for sentence and the offender takes no issue with those facts in light of the jury's verdicts for the majority of the counts, but does take issue or submits a slightly alternative version for counts 4, 6, and some aspects of conduct for counts 7, 14, 22, 23, 24, 26 and 42.

During the trial the central issues were not particularly centred on the details of the allegations, but rather it was the offender's case that the offending alleged either simply did not occur or any sexual acts that were performed were with the consent of the complainant - a position, it appears, the offender, despite the verdicts of the jury, still adheres to.

Upon reading the proposed facts provided by the Crown, the evidence at trial and the position taken by the offender (and of course, the verdicts) and submissions of counsel, I find the following facts established or proven beyond reasonable doubt.

#### FACTS

For all counts, the Dillwynia Correctional Centre is a female only correctional centre which is in the John Moroney Correctional Complex in Berkshire Park. Dillwynia houses all categories of female inmates, including people on remand and convicted and sentenced prisoners. Dillwynia contains a High Needs area, Medium Needs area, a Low Needs area and Behavioural Intervention Unit.

RSB:SND

The offender was employed by Corrective Services New South Wales from October 1999 and he transferred from Parklea to Dillwynia Correctional Centre in February 2009. At all relevant times, he was a correctional officer at Dillwynia. During 2015 he was a Senior Correctional Officer and on 26 September 2016 he obtained the position of Chief Correctional Officer. As part of his duties, the offender had regular contact with all inmates. He also had the ability to interact with inmates in various locations throughout the correctional centre, including accommodation area, offices and open areas of the centre.

At all relevant times he was in a de facto relationship with a fellow correctional officer.

All the victims were inmates within the correctional facility in which the offender was employed.

#### COUNT 2

In relation to the trial matters, count 2, and the victim concerning C.

The victim was called to the reception where the offender was working, she sat down and spoke with him. When she stood up to leave, he lunged straight onto to her, placing his hands on her body and pulled her in towards him, bringing his face to hers and kissing her directly on the lips with his tongue entering her mouth.

#### COUNT 3

Count 3, the same victim. The victim was in her wing, unpacking stores at the request of the offender. The store room in J block was about 5 metres by 5 metres in size. The victim's cell was opposite the store room. A couple of other inmates were also assisting with unpacking the stores. The offender asked the victim to help remove things off the truck and place them in the

RSB:SND

store room. When the other inmates were retrieving some things off the truck out the back of J unit, when the victim was loading things up on the shelves he 'hot sliced' her by running his hand between her legs and touching her vagina, and he said, "That feels good". This was not an isolated event.

#### COUNT 4

Count 4, the offender called the victim across to the High Needs office. They went into the manager's room to the right hand side of the office building. The door to the office was closed. They talked very briefly. She was standing up directly opposite him and just as she was about to leave he stuck his hand up the front of her shorts. The tips of his fingers searched for the edge of her underwear and he probed moving his fingers up under the elastic of her underwear. His fingers briefly touched her genitals and this lasted for a few seconds. She stopped him by bringing her hand down in a sweeping motion and saying "Oi" and "I've got to go back", and he escorted her back to J unit.

#### COUNT 5

In relation to count 5. After count 4 had occurred, the offender gave the victim a gift of three pairs of underwear. One pair was black and lacey, one pair was grey and pink. There was a third pair which was black and red. When he gave her the underwear he said to her that he would like to see her in them, that she had worked hard to tight get a tight arse, and that he could not wait for her to put them on and show him.

The offender hassled the victim to encourage her to show him herself wearing the underwear. She wore the underwear and a t-shirt under a robe. He came to her cell door in the evening and blew kisses towards her and tried to talk to her. He gestured to her to incite her to expose her body to him. She tried to shoo him away, but she complied as she was worried that if he

RSB:SND

continued, the other inmates would hear him. She turned and flipped up the back of her robe so that he could see her underpants.

After counts 4 and 5 occurred the offender gave the victim a note in which he wrote:

“Sorry I startled you last night, the knickers looked hot. Loved yesterday, you feel beautiful under your shorts”.

#### COUNT 6

Count 6, the offender called the victim over the loudspeaker in the lunchbreak, instructing her to attend the Low Needs manager’s office. She initially tried to avoid the request. Eventually she went over with another inmate. The offender told the victim to come in and told the other inmate that he did not require her. The victim sat on the chair opposite the offender, and she felt that she had no choice. He engaged her in small talk. He said he missed her. He put his hand up the front of her shorts and inside her pants. His fingertips were on the top of her vagina and she was seated.

In relation to count 7, I will deal with the plea matters after this.

The next series of offences concern the victim K, and they occurred between 1 August 2016 and 18 October 2018, at a time when he was initially a Senior Correctional Officer. He obtained the position of Chief, as I said, at 26 September 2016.

#### COUNT 8

Count 8, the victim asked the offender to help her to keep her job following a potential internal charge. The offender told her to come and see him later in his office and he would see if he could help her. She attended his office with a fellow inmate. The offender offered to shred the paperwork for the internal charge. The other inmate then left the office with the victim following. As the victim walked through the doorway the offender grabbed her on the

.31/03/23

RSB:SND

backside and pinched her bottom.

COUNT 9

Count 9, the victim was standing at the reception counter when the offender came in wearing his jacket over his left shoulder. He walked past her and said "Hi" and grabbed her backside, pinching the flesh between his fingers.

COUNT 10

In relation to count 10, the misconduct in public office. It comprised the following conduct:

Making sexual comments to the victim, such as "look after that arse".

Asking her whether she had a girlfriend and how she looked after herself in that respect.

Telling the victim personal information about himself, such as disclosing that he was previously a police officer, and showing her a photograph.

Approaching the victim while she was on her knees cleaning the reception area, placing his crotch near her face and saying "That's where I like you".

Offering favours to K, such as telling her that he had helped to get her a job at reception back, and offering to shred the paperwork for an internal charge against her.

Visiting her alone in the BIU, which is the Behavioural Intervention Unit, on two occasions. On the second occasion he attempted to grab and kiss her, but was interrupted by another correctional officer.

Engaging in an inappropriate sexual relationship, including the acts that comprise counts 8 and 9 on the indictment, with an inmate under his supervision and care, coupled with a failure to declare that contact in

RSB:SND

contravention of the internal policies and regulation.

In relation to the victim H. These offences occurred between 19 February 2016 and 1 October 2018, at a time when he was Senior and then Chief Correctional Officer.

#### COUNT 14

Count 14, occurred in November 2016, at a time when the offender was working as Chief Correctional Officer. The offender and other officers locked the victim into her cell during the afternoon muster. The offender made sure he was the last officer to come through the unit. He stood at the victim's cell window and gestured to her, pointing at her breasts and saying "Go on show us". He also pointed towards her vagina and motioned pulling her pants down. On this occasion she complied by showing him her breasts, but did not show him her vagina. This type of behaviour, where the offender attempted to encourage the victim to show him her body through the cell window occurred on multiple occasions and she regularly complied.

#### COUNTS 22 AND 23

Count 22 and count 23, they occurred in the same incident in September 2017 at a time when he was Chief Correctional Officer. The offender saw the victim in the compound. He asked her to go to his office with him and she complied. He told her that he had a present for her. He retrieved a Lebanese cucumber from his lunchbox. He requested that she go into the bathroom and insert the cucumber into her vagina and she complied. She returned to his office and they went to the SAPO office. He touched her vagina and felt the cucumber in her vagina. He told her to 'fuck herself' with the cucumber. She complied with that request and moved the cucumber in and out of her vagina and faked having orgasm. He then told her to eat the

RSB:SND

cucumber. She went into the bathroom and removed it and disposed of it.

COUNT 24

In relation to count 24, that was also a plea, I will deal with that later.

In relation to the victim O, these occurred between 27 March 2017 and 20 February 2019 when the offender was Chief Correctional Officer.

They commenced at some point after O's birthday in September 2017.

After the victim and another inmate had observed the offender engaging in sexual acts with the victim H in an office, they submitted an inmate application setting out what they had seen. An officer interviewed O about the incident. The offender approached O about the inmate application. She denied having made the report about him and the other victim H but the offender showed her the inmate application book with her signature. She then apologised for reporting him.

At some point after her birthday, perhaps a few months afterwards and after September 2017, she asked the offender about her birthday cards which she had not yet received. He showed her the cards and threw them in the bin. After this, the offender tried to repair the relationship, he offered to arrange a free lawyer for the victim to help her with her appeal. He told her to come to the office to discuss this.

COUNT 25

The victim attended the offender's office at his request on the premise that he wanted to talk to her about the free lawyer he could arrange for her. He put his hand around her arm, he tried to kiss her, he touched her breasts. She pushed him away and told him that she was scared and he told her that no one would know.

COUNT 26

.31/03/23



RSB:SND

About a week later, the victim attended the case manager's office at the offender's request. He asked her how she was feeling and she said, "Like a shit." He asked her why she was not happy and she said, "You're like my grandpa age." He told her that that does not matter as they were not going to have a relationship. He touched her hair and face and tried to kiss her and touched her breasts. She said, "Let's take it slowly." But he then moved his hand down, put his hand inside her pants and touched her vaginal area.

#### COUNT 27

A few days after that, the offender asked the victim to come and see him. She told him that she had her period and could not do anything. He said that was all right and they could wait. Then about a week later he asked her to come and see him again. She refused, again claiming to have her period. He told her that they would just talk. She attended his office as instructed and they talked. He moved towards her. She said that she still had her period. He said that she was a liar and it had been over a week. He pushed her onto the table, took off her pants and separated her legs and checked to see that she was not having her period. He said, "You're a liar, you don't have any period." She was terrified. She apologised to him for lying and he said, "It's okay you don't need to be scared and you should know better not to lie." He told her to fix herself up and go back to the unit and "Do not do it again". She went back to her unit. He approached her again that afternoon in the smoke out before muster and said, she should know better not to do it again and again, she apologised.

#### COUNT 28

A few days after that, the victim attended the offender's office at his request. They had some conversation. Then the offender moved towards

RSB:SND

the victim and kissed her. He touched her bottom and her breasts, he told her she was an attractive woman, that he like her hair and that he had never seen someone with such a smooth body. The offender took off the victim's leggings and underwear and bent her over on the desk. He stood behind her and had penile vaginal sexual intercourse with her. For the victim, this "felt like a lifetime". He told the victim that he had checked her records and knew that she was on a particular contraceptive. He ejaculated into the bin. Afterwards, she put on her pants, and he told her to fix herself up and go back to the unit and tell no one.

#### COUNT 29

Following an incident where the victim made an inappropriate remark to a SAPO officer about him resembling someone, an actor in some show, the offender told the victim that a complaint had been made about her behaviour and that as a result she might be moved from the gaol. He said he would try to help the victim out and sort it out.

About two weeks later, the victim attended the offender's office, they had some conversation. She was mensurating at the time and she told him so. She started taking off her pants and she told him, "I have a period on and you can even check." He said he believed her. He took his pants off and referring to his penis said, "Just taste it a little bit." He told her to get on his knees and she did so. He held her head and his penis went into her mouth. She performed oral sex while he stood in front of her, she felt that she had no option. He ejaculated into her mouth, she vomited into the bin, she washed her mouth in the sink, fixed herself up and left.

#### COUNT 30

The victim attended the offender's office at his demand, it was lunchtime,

RSB:SND

he had some grapes. He offered her some grapes and she declined. He asked her to sit on the desk, he took off her pants. He proposed placing the grapes in her vagina and she refused. He said, "We need to add some flavour," to the grape. He put the grape inside her vagina while she sat on the desk, the grape did not remain inside for long, he removed it with his fingers and then ate it.

#### COUNT 31

Immediately after this, after removing the grape from her vagina, he had penile vaginal sexual intercourse with her. While she was not timing the sexual intercourse, she said that it felt like "Hell... like a lifetime". He ejaculated into the bin. Afterwards, he told her to fix herself up, "do not let someone notice anything" and told her to go back to the unit and she left his office.

#### COUNT 33

This occurred between 1 June 2016 and 1 June 2018. It was involving a victim G and it comprises the following conduct.

The offender shared personal information about himself with her such as that he was formerly a police officer. He gave her favourable treatment such as highlighters, pens and helped her make an intergaol phone call to her partner. He offered to help her contact her stepdaughter by looking up the stepdaughter on his Facebook account at home and by using his contacts in the NSW Police to try to locate her. He offered to put in a favourable word with the Serious Offender's Review Committee to have another inmate moved from the gaol following a physical fight. The offender requested that the inmate return his favours by performing sexual acts, namely, a 'hand job', (masturbation of his penis) and a 'head job' (fellatio). The other conduct is

RSB:SND

engaging in inappropriate personal relationship with an inmate under his supervision and care coupled with a failure to declare that contact in contravention of the internal policies and regulations.

COUNT 34

In relation to victim M, these occurred between 6 May 2016 and 27 May 2017. The offender approached the victim in the compound and asked her to attend his office with him to sign a form for an extended visit with her family. When they got to his office, he closed the door behind him. He grabbed her hand and stroked it and he pulled her towards him, he pushed his erect penis (inside his clothes) into her hip and stomach area. He lent to kiss her, but she ducked away. He left and she immediately reported the incident to her friend, another inmate.

COUNT 35

The victim attended the offender's office with another inmate to ask for photographs to be taken of her family at the next family visit. The offender told the other inmate to stand outside the room and the victim went inside. The offender stroked the victim's hand, he grabbed her arm and pulled her closer, he lent down and tried to kiss her. He asked if she like him and what she would do if he kissed her. He told her that he liked her and told her that she had a beautiful smile. She said nothing and looked at the ground and managed to attract the attention of the other inmate who entered the office and they both left.

COUNT 42

Count 42 involves the victim N. Between 14 March 2014 and 20 February 2019, the offence comprised the following conduct of the offender involving an inappropriate personal relationship with this inmate. He

RSB:SND

her favours such as Dencorub which inmates were not allowed to have and gave her makeup. He used her to exchange notes with another inmate with whom he was having an inappropriate sexual relationship. He gave her tobacco in a bag to give to the other inmate and he did this about three times. When the victim asked the offender why he was having sex with other inmates, he told her to keep her mouth shut and do not worry about it or there would be consequences. When the victim refused to keep passing notes between the offender and the inmate, he got angry and said, "You'll do as you're fucking told," and put his forearm against her throat and yelled at her. The offender told the victim that he liked another inmate and that it did not matter that that inmate (relating to counts 44 and 45) was pregnant. That he engaged in an inappropriate personal relationship with an inmate coupled with a failure to declare that contact in contravention of the internal policies and regulations.

I note the jury returned verdicts of not guilty in relation to counts 39 to 41 on the indictment, these being the allegations that the offender had sexually touched that victim, N, by placing his hands on her breasts, her genitals and placing her hand on his penis. As she conceded in cross-examination, she did not mention the sexual touching in her first statement dated 30 April 2021. She first disclosed it in a later statement dated 28 April 2022. However, there was no such suggestion of recent fabrication in relation to assertions that the offender had given her tobacco and intimidated her by pressing his arm against her throat and telling her to do as she was told.

In relation to the 166 offence which is sequence 32 involving that same victim, the Crown conceded in light of the jury verdicts on the other counts the Court may not be satisfied beyond reasonable doubt of this offence and I am

RSB:SND

not. Sequence 33 has been withdrawn and it will be removed.

In relation to the victim, D these occurred between 17 June and 4 September 2018 at a time when the offender was a Chief Correctional Officer and at the time that the victim was pregnant.

#### COUNT 44

The victim wanted to speak to her partner but had no credit on her phone so she approached the offender who gave her free calls to her partner on two occasions. After the second phone call to her partner, the victim asked the offender to let her out of the office. She stood up and asked him to let her out. He was sitting across the desk from her. He said that he "liked pretty girls like [her]" and that she had to do him a favour because he had done her a favour. He walked around behind her and pushed her down on to the desk. He placed his hands on her hands. He pulled her pants down. He had penile-vaginal intercourse with her while standing behind her and he kept saying "five minutes and then I'll be done." To her it felt like it went on forever. After the sexual intercourse stopped she told him that he would pay for what he had done and that her partner would get him. The offender said no one would find out, that he was an ex-police officer and affiliated with a bikie gang and that no one would find out about it.

#### COUNT 45

Count 45 was misconduct in public office which comprised the following conduct:

Giving D favourable treatment, namely the two 10 to 15 minute phone calls with her partner when she was out of credit on the Arunta system. The calls were longer than generally allowed for phone calls.

That after sexually assaulting her, the offender told her personal

RSB:SND

information about himself intending to intimidate her into silence.

Engaging in the sexual act that comprised count 44 on the indictment with an inmate, coupled with the failure to declare that contact in contravention of the internal policies and regulations.

#### COUNT 49

In relation to the victim, S, which occurred between 24 June and 18 October 2018 he requested that she attend his office to clean it on four occasions despite the fact that it was not her job to clean. She generally attended with victim N. When S attended the office he did not ask her to clean, instead he engaged her in conversation.

. The third time the victim went into the offender's office, N, the other victim, went outside to clean so that he was alone with the victim. He put his arms around her in a firm bear hug and talked to her and asked her if she was shy. His bottom was on the table. He was half sitting and half standing and she was positioned between his legs. She could feel his erect penis pressed against her back and bottom near her tail bone as she tried to get away.

#### COUNT 50

The fourth time the victim went to the offender's office he asked her why she was shy. He blew kisses at her. He pulled her arm and placed her on a firm bear hug from behind and kissed her neck. He rubbed himself up against her and had an erection. He put his hands up her top and down her pants. He told her that she looked good and she tried to get away.

#### COUNT 51

In relation to count 51 which was misconduct, it comprised of offering S favours such as contraband tobacco, making sexual comments towards her in front of other inmates and engaging in the sexual acts that comprised counts

RSB:SND

49 and 50 on the indictment with an inmate coupled with the failure to declare that contact in contravention of the internal policies and regulations.

COUNT 7

In relation to the agreed facts for sentence, in relation to the plea matters, count 7, though there were some areas of dispute, the offence comprises the following conduct of the offender between 11 August 2015 and 29 December 2016, this is in relation to victim C;, making sexual comments to her including comments regarding her breasts and bottom; giving her written notes containing sexual comments; informing her of personal information about himself, for example that he was previously a police officer; offering favourable treatment to her, including gifts of underwear and medical cream.

In relation to the other aspect of that, the Crown presses of aggressively intervening to try to ensure she would keep her ring. The offender disputes that and asks for a finding. Basically, on the evidence before me, I am unable to find beyond reasonable doubt where the truth lies in that, though I do not think it adds much to the offence itself at all and so I have not taken that into account.

Kissing that inmate or attempting to kiss her and brushing against her, (this was not an isolated occasion); placing her hand on his penis (again, it was not a one off occasion and it was not isolated; I do find beyond reasonable doubt that he rubbed her knee when she was upset and wanting to call her brother who was unwell, and repeatedly calling that inmate over to see him in the custodial setting for personal conversations. So, engaging in an inappropriate sexual relationship including the acts that comprised counts 1 to 6 on the indictment with an inmate under his care and supervision and a failure to declare that contact.

.31/03/23



RSB:SND

Of course I am cognisant of the fact that whereas this comprises part of the conduct amounting to count 7, it does not distinguish non-consensual sexual contact. Care must be taken not to double punish the offender for the same conduct which comprises counts 2 to 6. For clarity, this applies for all misconduct charges including where part of the misconduct comprises sexual or indecent acts for which the offender has been found guilty of and is being sentenced for. I am very cognisant of the need to avoid any double counting.

#### COUNT 24

Count 24 relates to victim H and it occurred between 19 February 2016 and 1 October 2018 and included the conduct of making sexual comments to her, making physical contact and touching H in a sexual way on multiple occasions including in front of other inmates, giving her favourable treatment, for example, pain medications. I find beyond reasonable doubt that he requested her to consume his ejaculate. Performing sexual acts with the inmate such as fellatio, penile/vaginal intercourse on several occasions (consistent with the jury's verdict these acts are to be regarded as not amounting to sexual assault as the issue of consent) and engaging in an inappropriate sexual relationship with an inmate (including the acts that comprise counts 14, 22 and 23) for which he was found guilty.

#### COUNT 32

In relation to count 32, concerning victim O, this occurred between 4 January 2016 and 20 February 2019. It involved the conduct of misconduct by punishing her for reporting his inappropriate sexual relationship with another inmate, including restricting her access to personal mail; giving her favourable treatment, for example, offering her a free lawyer and stating he could make a complaint go away; attempting to touch and kiss her in his office;

RSB:SND

engaging in an inappropriate sexual relationship, including the sexual acts that comprises counts 25 to 31, with an inmate under his care and supervision, together with a failure to declare that contact, in contravention of the internal policies and regulations.

#### COUNT 36

Count 36 relates to victim M and was committed between 6 May 2016 and 27 May 2017 and included the misconduct of; making comments to her about her physical appearance, that for example she had a beautiful smile and he did not look at her like her like he looked at other inmates and other inappropriate comments; giving her favourable treatment such as extended family visits and access to his office (and consequently his phone and computer) without any supervision; engaging in an inappropriate sexual relationship, including the sexual acts which comprised counts 34 and 35, with an inmate under his care and supervision, coupled with a failure to declare that conduct, in contravention of internal policies and regulations.

#### COUNT 37

In relation to count 37 it involved two victims, I and J, and occurred between January 2018 and November 2018 when he was employed as the Chief Correctional Officer at Dilwynnia. J was an inmate at Dilwynnia from 27 September 2016 to 9 November 2018. I was an inmate there from 15 May 2017 to 9 November 2018. She was housed in J Unit for a year in October 2017 to 2018 and then moved to the BIU until her departure from Dillwynnia on 9 November 2018. J was housed in K Unit, the BIU Unit and J Unit until she was moved into the BIU on 24 October 2018 and departed Dillwynnia on 9 November 2018. They were in the SMAP protection area with another victim, H.

.31/03/23

20

RSB:SND

The offender showed one of the victims, another inmate, photographs of his dog, his motorbike and other personal photographs. On one occasion I was with him, inmate J and the offender. The offender and J arranged to have sex.

A week or two later, the offender met both of them in the Chief's office in the High Needs area. The window to this office was covered with cardboard so nobody could see inside. J's shorts were lowered to just above her knees. The offender touched J's vagina with his finger. I gave the offender penile oral sexual intercourse for a short time approximately one to two minutes. While he was standing behind her and J was leaning on the table, the offender then attempted to have penile vaginal sexual intercourse with J.

His misconduct included engaging in an inappropriate sexual relationship with I and J coupled with his failure to declare that contact in contravention of the internal policies and regulation and sharing personal information about himself with inmates.

#### COUNT 38

Count 38, involved the victim F, which was exhibit Y in the trial which includes - it is in relation to a misconduct charge - F was an inmate at Dillwynia Correctional Centre from 2 April 2018 until 4 August 2018 and she was housed in various units within the correctional facility. Another inmate with the initials of GG was also an inmate from 19 January 2016 until 6 July 2018 and housed in various units.

The offender did searches on his computer for the inmates. He viewed the search results on his computer which was a breach of Correctional Centre policies. He told them that he and his partner slept on alternative mattresses .31/03/23

RSB:SND

from time to time due to their respective back injuries. The offender gave F makeup which he said he purchased from Chemist Warehouse on the way from his house and smuggled into the gaol. She had chosen the makeup on his computer which he allowed her to view and he gave her the makeup. Sometime later, the victim F and the other inmate GG were in his office. Whilst in the office, F was sitting on his knee and he felt her vagina over the top of her clothing. Whilst seated, the offender's duress alarm pushed into the arm of the chair and was activated. Shortly afterwards they could hear the sound of officers running, keys jangling and voices calling Wayne. Both inmates then left the office and not long afterwards F was released from custody. When the other inmate had left Dillwynia, she was in the possession of contraband makeup and items.

The offender's misconduct, included engaging in an inappropriate sexual relationship with F coupled with failing to declare that contact in contravention of the internal policies and regulations, sharing personal information about himself with inmates, allowing F to view search results on his computer with an internet connection in a correctional centre and giving favours to her being contraband such as makeup which he brought into the correctional centre.

#### COUNT 43

Finally, in relation to the victim E for count 43. She was an inmate at Dillwynia from 23 January 2017 to 30 March 2017 and then returned in October 2017 until July 2019 where she was housed in various units. From around the time of the NAIDOC celebrations on 8 July 2018 until the offender went on leave until 18 October 2018, the offender had sexual intercourse with the victim E on around five occasions.

.31/03/23

22

RSB:SND

On one occasion, he gave her a type of hair dye that was not available in the buy-ups offered in prison. On a later occasion he gave her tobacco loose inside a glove. On 11 February 2019 he arranged for her to receive a new MIN card worth about \$5. So, his misconduct included engaging in an inappropriate sexual relationship with E coupled with a failure to declare that relationship and contact in contravention of the internal policies and regulations, introducing contraband to the centre and giving banned items to inmates and giving favours to her including a new MIN card.

#### OBJECTIVE SERIOUSNESS

In relation to my assessment of the objective seriousness of the offending, I do note the recent decisions such as *KM v R* [2023] NSWCCA 10 [restricted] and have questioned the use of phrasing such as “in the lower range, just below midrange”, adopted since the decision of the statutory non-parole period in the decision of *R v Way* (2004) 60 NSWLR 168 and rendered unnecessary by *Muldrock* in the High Court in 2011. Justice Button commented at para 52 in *KM*, that;

“In my opinion it certainly remains incumbent upon sentencing judges to provide a concise and clear assessment of the objective seriousness of offences for which they are imposing sentence and the evidence upon which that assessment is based as an essential component of open justice and instinctive synthesis. But such an assessment should be in terms readily understood by lay persons such as the offender, loved ones of the offender, loved ones of any victim and member of the community generally. I respectfully think that such assessment should be founded on easily understood English adjectives such as ‘inconsequential’, ‘trivial’, ‘significant’, ‘serious’ and ‘grave’ or ‘in the worse class of case’ and so forth. Fine distinctions based on artificial segmentation of the spectrum are, in my respectful opinion, unnecessary, apt to confuse members of the public and liable to give rise to appeal grounds that do not advance the interests of justice”.

Here, though I do note those comments, I proceed.

The circumstances of relevance here in the assessment, include, for all

RSB:SND

counts. The offender was in a position of authority as a senior correctional officer (noting of course that element is contained in several counts and the abuse of trust is an essential element of each count of misconduct in public office and double counting must be avoided), yet acknowledging, however, that the degree of such abuse has remained a significant factor. I am also cognisant of the fact that the misconduct offences, nearly all rely upon the sexual relationship which comprises of the statutory counts and that again a risk of double counting must be guarded against.

The victims were also all inmates in the correctional centre. All the victims were female.

In relation to count 2, the maximum penalty is seven years with five years standard non-parole period. It involved lunging at her, a kiss to the mouth and placing of his hands on her shoulders. His tongue entered her mouth. It was of short duration. It occurred in the reception area of the protection area. It was not isolated offending - she stated there was more than three, less than six - though of course I am sentencing for this particular offence. The Crown submitted it was below midrange whereas Mr Tyler-Stott submitted at lower end and I also too find it towards the lower end.

Count 3, the maximum penalty is the same. It occurred in the storeroom when she was alone with him and no other inmates nearby. It involved him running his hand up between her legs and touching her vaginal area and commenting that it felt good. It was short duration, it was opportunistic, it was not isolated - though occurring on multiple times, though again he is being sentenced for this particular occasion. The Crown submits below midrange as does Tyler-Stott and as do I.

Count 4, again the same maximum penalty. He created this opportunity

RSB:SND

by directing her attendance to his office which he closed. It involved him touching the front of her shorts with his fingers searching for the edge of her underwear and briefly touching her genital area ( I accept her evidence beyond reasonable doubt that he did in fact briefly touch that part of her body). This continued for a few seconds until the victim pushed his hand away from her. Some planning involved. The Crown submits below midrange. Mr Tyler-Stott submitted below midrange if the Court had a doubt about genital touching, which it does not, and so I find it just below midrange.

Count 5 with a maximum penalty of three years. It occurred when she was in her cell. Direction from him to show her the underwear that he had previously purchased. It involved her flipping up the back of the robe to reveal her underwear. The Crown submits low range as does Mr Tyler-Stott, submitting at the bottom of the range, and I find well in the low range.

Count 6, again the maximum penalty of seven years with a standard non-parole period of five years. It occurred at lunchtime. The offender again created the opportunity to get her alone with him which she tried, in her limited capacity, to do to avoid. During the conversation he put his hand up the front of her shorts and inside her underpants, it was skin to skin on her vaginal area. Unknown duration, but not long. The Crown submitted within the middle range. Mr Tyler-Stott submitted there is no reference to her vagina being touched in her statement and it would cause the Court to have a reasonable doubt. To confirm I do not - notwithstanding there was no reference to her vagina in her statement, her evidence was clear and unambiguous. The ruse created by the offender to get her alone, putting his hand up into her shorts and stating, he missed her, clearly support the intention was to touch her genitals. I find around midrange.

RSB:SND

Count 7, I will deal with all the misconduct charges separately and together after I have dealt with the indecent and sexual assaults.

Count 8, maximum penalty of seven, standard non parole period of five years. It occurred in his office and involved the grabbing and pinching of her bottom. Short duration. The Crown submits below midrange. Mr Tyler-Stott submitted bottom end of the range and I find in the low range.

Count 9, maximum penalty the same and occurring at the reception counter. It involved the grabbing of her bottom over her clothes and pinching her bottom. The Crown submits below midrange. Mr Tyler-Stott submitted towards the lower end of the range and I agree it is in the lower end of the range.

Count 14, with a maximum of three years. It involved a direction to the victim, who was in her cell, to reveal her breasts and to pull her pants down. I accept this evidence beyond reasonable doubt and I note the similar behaviour of the offender towards the victim C. She revealed her breasts, she was in fear of refusing, it was not isolated. The Crown submits middle range whereas Mr Tyler-Stott submitted lower end of the scale and I find just below midrange.

Count 22 and 25, involved the same incident - with a maximum of three years and seven with five years standard non-parole period respectively. He created the opportunity to be alone with the victim and it involved the direction of the offender to the victim to insert a vegetable inside her vagina and the touching of her vagina with the object inside her (without penetrating the vagina). It was degrading and humiliating to the victim. The Crown says high range and Mr Tyler-Stott submitted the Court should find recklessness on behalf of the offender's state of mind as to her consent. In light of the depraved and gross conduct incited and directed, I find the offender knew

she .31/03/23



RSB:SND

was not consenting beyond reasonable doubt and I find the objective seriousness for both to be above midrange.

Count 25, with a maximum penalty of seven years and five years standard non-parole period. He directed her attendance to his office. It involved an attempted kiss and a touching of her breasts over her clothing. It was of short duration with a degree of planning, yet unsophisticated. The Crown submits middle of the range, whereas Mr Tyler-Stott submits below midrange and I find it below midrange.

Count 26, same penalty. He directed her attendance to his office to be alone with her. It involved the touching of her hair, face, breasts and putting his hand inside her pants and touching her vaginal area, which I am satisfied beyond reasonable doubt. The Crown submits high range, the defence below midrange and I find at midrange.

Count 27, same penalty. Again, the offender directed her attendance to him creating that opportunity to be alone with her. It involved him pushing her on to a table, taking off her pants and separating her legs to see if she was still menstruating and chastising her for lying. It was degrading, shameful and obscene - indicating a wrongful sense of ownership over the victim's body. Crown submits high range, defence middle of the range and I find it well above mid-range.

Count 28 with a maximum penalty of 20 years with a standard non-parole period of 10, it occurred in his office after the offender directed her attendance. There was a degree of planning. It was penile/vaginal intercourse. He ensured she knew he had access to her personal and private information. He effectively dismissed her post ejaculation. It was not overly lengthy. Crown submits high range and defence mid-range if not slightly below, I find at mid-

RSB:SND

range.

Count 29 the same penalty. It occurred in his office, it involved fellatio. He ejaculated into her mouth, causing her to vomit. Crown submits high range and defence mid-range if not slightly below and I find around mid-range.

Count 30 the same penalty of 20 years and ten years standard non-parole period. Again, he directed her attendance to his office to assault her. It occurred at lunch time. Notwithstanding her refusal the offender placed a fruit inside her vagina. It was of short duration. He removed the object with his fingers and then proceeded to eat it. It was degrading, objectifying and perverse. The Crown submits at least within mid-range and the defence submitted mid-range if not slightly below and I find above mid-range.

Count 31. Immediately after count 30, the offender had penile/vaginal intercourse with the victim and then dismissed her. Crown submitted middle range and the defence as well, and I find around mid-range.

Count 34 which involves another victim. Maximum seven years with the five years standard non-parole period. He used a ruse to get the victim alone in his office. It was skin to skin on hand and pulling her towards him and pushing of his erect penis with clothing into her hip and stomach area and attempting to kiss her. It was of short duration. There was a degree of planning. Crown submits below mid-range, defence at low end and I also find in the lower range.

Count 35 same maximum penalty. It occurred in his office and the offender ensured they were alone. It involved stroking of her hand, grabbing of her arm and pulling her close to him. He attempted to kiss her. There was inappropriate complimentary commentary. Crown says below mid-range, defence at low end. Again I find in the lower range.

RSB:SND

Count 44, another victim D, maximum penalty of 20 years with 10 years standard non-parole period. Occurred in his office after he inappropriately allowed her a favour. It was forceful, it was aggressive, there was penile/vaginal intercourse from behind. It was not of short duration, the victim was pregnant. It was accompanied by threats. The Crown submitted high range and defence mid-range and I find this well above mid-range.

Count 49 the maximum penalty is seven years with five years standard non-parole period. It occurred in his office when alone. It involved his arms around her and pushing of his erect penis into her back and bottom. It was of relatively short duration. She tried to get away and involved a degree of planning. Crown submitted middle of the range, defence below mid-range and I find it below mid-range.

Count 50, same maximum penalty. It occurred in his office with a degree of planning. It involved pulling of her arm and putting her into a bear hug from behind and kissing her neck, rubbing his erect penis against her and hands up her top and down her pants. Crown submits mid-range and the defence below mid-range and I find just below mid-range.

In relation to the s 166 certificate matters, I am not prepared, as I said, to find sequence 32, relating to N proven beyond reasonable doubt, as consistent with the jury's assessment, I am not satisfied beyond reasonable doubt of her reliability and credibility. I do not find this sequence proven.

In relation to sequence 30, I am satisfied beyond reasonable doubt that the Crown has proven the elements of intimidation, as I found that witness to be a credible witness and there was support for her account directly and indirectly with other witnesses and victims in this matter and also some of the threats alleged were also made to other inmates such as D and the evidence .31/03/23

RSB:SND

of another witness, Mr Barglik. I find this offence proven beyond reasonable doubt and I find it objectively serious.

Whilst all statutory offences included the element of being under his authority - the vulnerability and the degree of each female victim, as an inmate in a correctional facility in which the offender was either a Senior or indeed Chief Correctional Officer was under his absolute direction and control and the power disparity cannot be understated nor ignored. The victims had no where to turn to and when they mounted courage to turn to someone else in authority they were effectively ignored and dismissed - and in one particular case the evidence indicated that once an allegation of such sexual and positional impropriety was witnessed and reported by an inmate who went on to be a victim of the offender's sexual offending - the investigation was shelved and just simply set aside upon a denial by the offender to those investigating, without even a question being asked of the alleged victim.

Here, the offending consisted of mostly separate events, some more serious than others. Each would appear to be to some degree opportunistic when he was alone (or sought to ensure he was alone with the victim) or if someone else was around or nearby he would brazenly and quickly indecently assault the victim.

The offending was also not isolated to these specific acts. It is well established that whilst an offender cannot be punished for offences which are not charged it is a material consideration in determining the appropriate sentence that the facts reveal behaviour which was part of a wide pattern of conduct: *R v Gould* [1999] NSWCCA 177 at [12]. Further an offender may well lose the benefit of leniency that might be granted on the basis the offence was an isolated incident.

RSB:SND

Most were of a non-specific, but it does not appear overly lengthy duration. The custodial setting in which the offences occurred no doubt necessitated the offender committing his offending in a timely fashion to avoid detection.

I am mindful however that the authorities have held that a short duration of a sexual assault would not ordinarily be considered as a factor that reduces the objective seriousness of an offence *Sharma v R* [2017] NSWCCA 85 at 56; *Cowling v R* [2015] NSWCCA 213 at [16] and *R v Daley* [2010] NSWCCA 223 at [48].

It is well established that the offending is to be assessed by reference to what is involved and not by the absence of features which would serve to aggravate the seriousness of the offence: see *Greenwood v R*; *R v CTG* [2017] NSWCCA 163 at [58]-[68]. It would rarely, if ever, be a matter in mitigation that an offender does not commit a worse offence.

#### IN RELATION TO THE MISCONDUCT CHARGES

Wilful misconduct in public office is a common law offence. The offence of misconduct in public office is, by its nature protean, covering a wide range of offending and it has been observed that the object of the offence of wilful misconduct in public office is ensuring a public official does not abuse intentionally the trust reposed in him.

Provisions of the *Crimes (Sentencing Procedure) Act 1999* apply to common law offences.

When a Court is sentencing for a common law offence, a settled approach in the evaluative exercise entailed by an assessment of the objective seriousness of the particular offending is to use, as a 'reference point' an analogous or relatively similar statutory offence to which a maximum penalty

RSB:SND

has been prescribed by Parliament. However, the adoption of the maximum penalty for a corresponding statutory provision as a reference point does not 'fetter the discretion' to impose a sentence 'which remains at large' and can be greater than that maximum.

Here the Crown submitted that the Court would find the offences contrary to ss 236Q and 253G of the *Crimes (Administration of Sentences) Act 1999* which carry a maximum penalty of two years each and/or 20 penalty units, as useful reference points for some of the conduct for which the offender is to be sentenced.

The cases, as limited as they may be, illustrate the variety of public officials who can commit the offence of wilful misconduct in public office and the variety of circumstances that can constitute the crime. These cases also illustrate the matters, such as the period of the offending, the planning involved, its motivation and the direct loss occasioned or profit derived (where relevant to the charge) are all matters that bear upon an assessment of the criminality involved. However as stated in *Obeid* at para 79:

"The essence of the offence concerns a breach of trust in the form of a deliberate or reckless breach of duty owed by a public official to the public. It must follow that a very significant matter to any assessment of the level of criminality involved is the nature of the duty that is owed and the extent of the breach. The more senior the public official, the greater the level of public trust in their position and the more onerous of duty that is imposed".

With respect to the objective seriousness of the misconduct offences before me, all offences for which the offender is to be sentenced are extremely serious. The offender was a Senior or Chief Correctional Officer when he committed them and he consequently held high office within the gaol. His offending involved the gross breach of trust on his behalf to the community who have entrusted him to run the Correctional Centre lawfully and properly

RSB:SND

and also to the inmates to which he exploited his rank and position for his own sexual gratification. The public generally, and the inmates specifically under his care, are entitled to have confidence in those placed in such positions, who are capable and responsible of wielding great power over how they are to live their daily lives and the conditions in which they lived, that they will be appropriately and lawfully looked after.

In relation to count 7 which was a plea of guilty I note the duration was 16 months. It involved making sexual comments and provision of notes to the same effect to the inmate. It involved disclosing personal information about himself to the inmate and provision of gifts to the inmate – for example underwear and medical cream. It also involved kissing, attempting to kiss and brush past the inmate – which were not isolated or singular events, placing the inmate's hand on his penis, again not an isolated occasion. As I said, I do find beyond reasonable doubt he rubbed her knee when she was upset about calling her brother, repeatedly calling the inmate to see him to engage in personal conversation and engaging in an inappropriate sexual relationship including counts 2 to 6 and his failure to declare such conduct.

Count 10. The duration was over two years and involved making sexual comments about the inmate, revealing personal information about himself, sexual innuendo, offering personal favours to her, deliberately visiting her alone and engaging in an inappropriate sexual relationship including the acts that amount to counts 8 and 9.

Count 24 which was a plea of guilty regarding H, the duration was over two and a half years and it involved engaging in various sexual acts with the inmate of fellatio, penile/ vaginal intercourse in and around the SAPO area of the correctional facility and in her cell ( the incidents outlined previously -

for .31/03/23

RSB:SND

clarity, I have not sentenced on the basis of non-consent consistent with the jury's verdicts) and engaging in inappropriate sexual relationship including those acts which comprise counts 14, 22 and 23 together with his failure to declare.

Count 32, which was a plea of guilty, went for a duration of over three years. It involved punishing the inmate for reporting his inappropriate sexual relationship with another victim, including restricting access to mail, giving her favourable treatments such as offering her a free lawyer, attempting to touch and kiss her, and engaging again in the inappropriate relationship including the sexual acts amounting to counts 25 to 31 and failing to declare such conduct.

Count 33, G - with a duration for over two years, it involved disclosing personal information about himself, giving favourable treatment to her, requested a return of favours for her given - including sexual favours and engaging in the personal relationship and failing to declare it.

Count 36, was a plea of guilty, the duration was over one year. It involved making comments about the inmate's personal appearance, giving the inmate favourable treatment such as extended family visits, leaving this inmate (with another) alone in his office, thus with access to the phone and computer, engaging in an inappropriate sexual relationship including counts 34 and 35 coupled with his failure to declare.

Count 37 was a plea of guilty and the duration was over 10 months, involved two victims, who were both inmates. He engaged in sexual acts with both and generally having an inappropriate sexual relationship with both of them with failure to declare and sharing personal information about himself to the inmates.

Count 38, the duration was over four months, it involved engaging in an



RSB:SND

inappropriate sexual relationship with the inmate, coupled with a failure to declare it, sharing personal information about himself, allowing the inmate to view search results on his computer, and providing contraband items to the inmate.

Count 42, the duration was nearly five years, it involved the provision of prohibited items to the inmate, using the inmate to exchange notes with other inmates, provision of tobacco, intimidating the inmate to ensure secrecy.

Count 43, a plea of guilty, with a duration of around seven months. It involved engaging in an inappropriate sexual relationship with the inmate and a failure to declare such relationship, introducing contraband items into the centre and giving banned items to inmates, giving favours to the inmate including a new MIN card.

Count 45, the duration was around six weeks. It was a provision of favourable treatment - extended phone calls, disclosing personal information about himself (and done in order to silence her) and engaging in the sexual act of count 44 and failing to declare that contact.

Count 51 – involved victim B. The duration was just under four months. It involved favours such as contraband tobacco, making sexual comments to her and engaging in sexual acts making up counts 49 and 50 with a failure to declare such contact.

#### VICTIM IMPACT STATEMENTS

One of the express purposes of sentencing is to recognise the harm done to the victims of an offence and to the community. In this matter, the Court was provided with victim impact statements from victims C, K and O.

Each victim impact statement was an articulate and poignant expression of the pain and anguish the victim endured and continues to endure at the

RSB:SND

hands of someone who was entrusted and paid to look after them. As one victim so accurately put it, "I was in your care. I should have been protected by you, instead I needed protection from you".

The victim impact statements reflects the awareness that now exist within our society of the real prospect that victims suffer long term serious emotional and/or psychological harm as a consequence of offending, no matter how an offence is classified at any scale of seriousness.

It is accepted that victims of sexual offences suffer and may struggle with the consequences for many years and it is necessary to keep in mind that these consequences are one of the reasons why offences of this type are viewed so seriously by the Courts and the high maximum penalties.

I am also aware that the offender is only to be sentenced for the harm resulting from the offence which is reasonably foreseeable: *Josefski v R* [2010] NSWCCA 41 at [39]-[39].

In relation to the misconduct charges, as was indicated earlier, they are all objectively very serious examples of the offence. Some are more serious than others, particularly where they involve not only an inappropriate sexual relationship but the bringing of contraband and other banned items into the correctional centre, which clearly undermines those fellow colleagues of the offender who are ardently abiding and enforcing the established rules and regulations of the prison for their own and the inmates' safety.

For clarity, I have been very careful in ensuring I have not double counted where the offending involves or includes the acts on the indictment. I consider the similar statutory offence applicable as a reference point to a degree but the offending here clearly goes above and beyond what is contemplated in those particular sections.

RSB:SND

Whilst I consider it a very difficult and somewhat impossible task to categorise where the objective seriousness lies in these offences - in light of having no maximum penalty - I will endeavour to do so; count 7, 10, 36, 51 below mid-range; counts 24, 37, 38, 43 above mid-range; count 32 above mid-range to high; counts 33 and 45 at mid-range.

#### SUBJECTIVE FACTORS

In relation to the personal circumstances of the offender, I have before me the sentence assessment report dated 11 October 2022, the psychiatric report of D Frank Chow dated 16 February 2023, the psychological assessment report of Dr Emma Collins, Corrective Service documents, reference of his partner Tanya Hockey, the report of Guy Vicars in relation to Tanya Hockey and a letter from Dr Pillay in relation to Tanya Hockey, two letters of the offender and a letter dated 10 March 2023 from the Director of Parliamentary and Executive Services which I have marked exhibit 8 which was handed to me recently, and MFI 4 for the corresponding submissions.

From that material it can be seen that the offender is currently 66 years of age. He grew up in Sydney and describes his childhood as difficult. His father passed away when he was ten and he reports that he struggled with this as they shared a close relationship. He grew up with his mother and four siblings. He said he was not particularly close to his mother. His sister died in around 1993 from a heart condition and his mother passed away in 1997.

He has one biological child and one stepchild with whom he says he has regular contact with. The offender was married in 1985 and his wife was diagnosed with motor neurone disease in 2005. She attempted to commit suicide in 2011 by swallowing a bottle of Valium, however it did not work. At that point, the offender moved her into full-time care in a nursing home where

RSB:SND

she remained for another four years before eventually passing. He said he visited his wife regularly at the nursing home.

The offender has been in a relationship with his current partner Tanya Hockey since 2006. She was a mutual friend of he and his wife and assisted with his wife's care. He said that he and Ms Hockey did not reveal their relationship to his wife initially but discussed it with her at a later time. He says that his former wife was, it might seem unsurprisingly, not really accepting of the relationship at first. The offender referred to his current relationship as strong and stable, although reported a decline in the couple's intimacy in 2013 when he was diagnosed with a medical condition. He says they maintain daily telephone contact. His partner reported that the offender is her support person and she has become mentally unwell since 2019 due to a work situation which caused her to suffer from panic attacks, PTSD, anxiety and depression. This is supported by the report of Guy Vickers and Dr Pillay. She stated she has declined since the offender has been incarcerated.

The offender finished school in year 10 and worked in hospitality. He was employed with New South Wales Police between 1986 and 1996, when he resigned. He began working in Corrective Services in 1997 and worked as a correctional officer at Parklea from 1997 to 2009 and was then transferred Dillwynia Correctional Centre where the offending took place. In 2016, he was promoted to Chief Correctional Officer. He remained in Dillwynia until 2019 when he was suspended without pay.

In relation to his health, he stated he suffered neck and back injuries from a motor vehicle accident in 1999. He also sustained injuries to his back at work a couple of times at Parklea. He claims he was taking a lot of Panadeine Forte for his pain and developed a dependency since 2000, which only ceased

RSB:SND

since he entered into custody. He denied any withdrawal symptoms following his remand.

In 2002 to 2004, he suffered from shingles he caught at work which developed into Bell's Palsy. He suffered a heart attack in 2008 and states that he suffers from hypertension and hypocholesterolemia which are managed by medication.

In relation to his mental health, he reported experiencing symptoms of depression and anxiety at the time of his offending due to the decline in his former wife's health, in conjunction with her passing in 2016. He engaged with a psychologist in 2019 upon suspension from work who diagnosed him with adjustment disorder mixed with anxiety and depressed mood. He claims his mental health impacted his ability to recognise the severity of his actions which he alleged he subconsciously chose to ignore. He said he suffered from recurrent sleeping disturbances, flashbacks and nightmares of traumas in his life, especially of those that he witnessed during his police career, motor vehicle accident and wife's prolonged illness and eventual death.

In 2015, he saw Dr Chow and presented with insomnia, emotional numbness and depressive features. He continued treatment with his GP in 2016 after his wife passed and it was from 2016 to 2019 that the offending took place. He claims he was 'not thinking straight' during that period of time. Dr Chow opined that the offender was likely suffering from an underlying chronic post-traumatic stress disorder which started with his police career. He also diagnosed the offender as suffering from major depressive disorder and determined that he appeared to suffer poor mental health at the time of his offences.

Currently, the offender reported distressed mood with sleep disturbance,

RSB:SND

lethargy and ruminative thinking and PTSD to Dr Collins. She found that the offender continues to meet the criteria for PTSD and depression. The offender is currently prescribed medication to manage his depression and reports he is coping well.

In relation to substance abuse, the offender reported he would drink alcohol to cope with the trauma he has experienced over his life and claims that he drinks daily or did at least four to five drinks per day and sometimes more. He stated he smoked marijuana when young but stopped for many years and said that since his suspension from work in 2019, he started smoking cigarettes heavily again and recommenced use of marijuana.

In relation to his attitude towards offending - Community Corrections found that the offender lacked insight into the severity of his actions and blamed the offences on the victims, stating that he felt pressure to perform sexual favours for them. Community Corrections found that he attempted to victim blame. He admitted he was sexually attracted to a number of female inmates, however claims he never acted on such until he was 'manipulated' by one of the female inmates whom he claimed offered him sexual favours. He alleged that this progressed to other inmates propositioning him for intimacy which he says they lacked due to their incarceration.

The offender stated the responsibility of the offences needs to be an even share between himself and the victims as they pursued him and cannot be trusted. The offender did not consider any of the sexual acts to be have been illegal due to the fact he claims both parties were consenting at all times, despite being an authoritative figure. He described to Dr Collins that he was vulnerable and stated that; "one of the victims was working on me but I was too oblivious to pick up on what was going on". He was unable to recognise

RSB:SND

any physical, emotional or psychological impact to the victims involved, stating it was always consensual and the victims most certainly loved the experience they had - displaying, as it was said by the author, limited insight into the severity of his actions.

In relation to the misconduct in public office offending, the offender stated he was disgusted and ashamed of his poor decision making, however continued to deny that he took advantage of his position of power. He acknowledged that he had failed in his duty of care as a correctional officer but maintained that there was no negative impact on the victims. He indicated he is willing and able to undertake intervention to address his sexual offending and mental health concerns.

In his letter to the Court, he expresses remorse for his appalling and unethical behaviour of allowing himself to be involved with female inmates, although again reiterates that all contact with the women was consensual.

The offender has a prior conviction for high range drink driving in 1982 which plays little if any role here. Community Corrections classify the offender as a low-medium risk of reoffending and a very low risk of sexual reoffending.

In relation to his time in custody, he reported difficulty in initially adjusting to the custodial setting, however he is now placed in a restricted area with limited inmates where he feels relatively safe. He was in isolation from 5 October 2022 at his own request due to his perceived risk from other inmates.

The offender stated he is a non-association inmate and has no contact with other inmates except through a brick wall.

He spends 17 and a half hours per day locked in his cell. He stated that the conditions of his incarceration are causing him severe stress, anxiety, depression and heightening with PTSD.

RSB:SND

### GENERAL AND SPECIFIC DETERRENCE

In relation to general and specific deterrence, in relation to the misconduct counts, in each case the necessity for the sentence to reflect considerations of general deterrence and denunciation predominate over other sentencing considerations, as there is a strong need to deter those in public office from contemplating actions that damage or undermine government institutions and to denounce those who are convicted of doing so: *R v Obeid (No 12)* [2016] NSWSC 1815

Of course general deterrence has a significant role to play also in the indecent and sexual assaults before the Court and clearly specific deterrence has a huge role to play in this matter.

### FINDINGS

In determining appropriate sentence, it is necessary to have regard to a number of factors, including the legislative guideposts and they are in the form of maximum penalties applicable which serve as an indication of the relative seriousness of the offence and any standard non-parole periods applicable to a particular offence. Maximum penalties invite comparison between the worst possible case and the case at bar and as such, taken on balance with all relevant factors, a yardstick.

Regard must also be had to the range and nature of the criminal conduct prescribed by the offence.

Sentencing for each offence committed by the offender is governed by the provisions of the *Crimes (Sentencing Procedure) Act*. The Court is to take into account the aggravating and mitigating factors that are relevant and known to the Court and other objective and subjective factors that affect the relative seriousness of the offence. These matters are in addition to any other



RSB:SND

matters that are required or permitted to be taken into account.

Any factor that is a matter of aggravation must be established by the Crown beyond reasonable doubt. Matters in mitigation, however, need only be established on the balance of probabilities and the Court is not to have regard to an aggravating factor if it is an element of the offence, although it is permissible to consider the extent to which a particular factor is present.

The Court is also not to take into account as an aggravating factor a circumstance that is an inherent characteristic of the offence.

In relation to aggravating factors, here s 21A(2)(k) a position of trust.

I am cognisant of the authorities in relation to the care to be taken when the element of position of trust is in the charge, and I have been. I also note that it is part of the misconduct offences. The breach of trust has been, with care, taken into account in my assessment of objective seriousness.

In relation to mitigating factors, he has no prior convictions and good character - although for the misconduct charges it is well-established that the prior good character of an offender is afforded less weight in the sentencing process than it would be for other offences due to the decision of *R v Obeid* (No 12) [2016] NSWSC 1815 and whilst it does play some role in relation to the other offending, it must be acknowledged his offending spread over some years and it was committed upon many victims.

The offender is 66 years of age. It is well established that advanced age may affect the type or length of penalty to be imposed and may be relevant in combination with other facts of sentence such as health.

As stated in *R v Sopher* (1993) 70 A Crim R 570 at 573

“Age and health are relevant to the length of any sentence but usually of themselves would not lead to a gaol sentence not being imposed if it were otherwise warranted.”

RSB:SND

The extent of any mitigation results from advanced age would depend on the circumstances of the case, including the offender's life expectancy and any treatment needed, but age is not a licence to commit an offence.

As Wood CJ at Common Law stated in *R v McLean* (2001) 121 A Crim R 484 at [44]:

“Moreover, while the age of a person standing for sentence needs to be taken into account, as do any other circumstances such as the classification of the offender, or illness, that may make imprisonment more onerous, lest a punishment be imposed that is out of proportion to the objective and subjective criminality involved, this cannot give rise to an expectation that the elderly can offend with relative impunity.”

In addition I am aware of the relevant principle summarised by Steytler P in *Gulyas v Western Australia* which were referred to in the recent decision of *Liu v R* [2023] NSWCCA 30, where the Court held that the advanced age does not automatically lead to the imposition of a lesser sentence than the objective circumstances require and the impact of advanced age on an offender's imprisonment will usually depend on 'continuous ill health' or some other age related state but it is still subject to proportionality, the punishment must still fit the crime.

The offender clearly has some physical health issues as outlined earlier in this judgment.

In the recent decision of *Hordern v R* [2019] NSWCCA 210 there were submissions in evidence of the applicant's health issues concerning management of his health whilst in custody together with the evidence of life expectancy and the principles were endorsed and summarised by Beech-Jones CJ at CL in *R v Obeid* (no.12) NSWSC 1815 at [116]-[120].

Here, I have applied those principles and there is no material before that

RSB:SND

would suggest that Justice Health could not adequately deal with the offender's health issues whilst in custody.

In relation to any aspect of COVID-19, I have taken it into account in my finding of special circumstances.

I note the offender was assessed as having a low-medium risk of reoffending. In light of his age, mental, physical health and the sentence to be imposed I do accept he is unlikely to reoffend or have the opportunity to do so.

In relation to the question of remorse. It is abundantly clear from the Sentence Assessment Report that the offender has little if any, insight into his offending behaviour concerning the sexual assaults. He does express some regret in relation to the misconduct charges. He claims, in relation to the sexual or indecent assaults, he was 'manipulated' by one victim and he 'entertained' other victims who were craving male intimacy and was pressured into performing sexual favours. To make this abundantly clear, I do not accept such claims. And, so, a feature of the material before me is that the offender still maintains his denial of guilt in these matters regardless of the strength of the Crown case, the victims' evidence and the verdicts of the jury.

Of course, he is not to be punished for pleading not guilty, nor is he to be punished for the resulting need that the victims had to go through the daunting experience of giving evidence at a jury trial.

But his lack of remorse is relevant- not because it is an aggravating feature that he is not sorry for what he has done, but because there is no mitigation flowing from the offender saying that he was sorry for the harm that he caused the victims - those under his care.

Despite this lack of remorse there does appear to be a low to medium risk of re-offending and some prospects of rehabilitation, although this was

RSB:SND

disavowed by his counsel. Not because the offender says that he is going to make steps not to do in the future what he has admitted he has done in the past, but because he has not offended since the commission of these offences, he is surrounded by an extended and supportive family and a network of friends. In that sense, he does have some positive prospects of rehabilitation, despite failing to acknowledge the obvious, that he did what he has been found guilty of doing. Overall though, I find guarded prospects of rehabilitation.

In relation to the mental health, there is some evidence of some mental health issues and I am prepared to accept them, but I do not accept that they are causally linked to his offending. The planning, the ability to do acts in a custodial setting without any apparent detection from other officers, the repetition of it, the number of victims, all demonstrate the offender manipulated the system, abused his power for his own selfish purposes - it was not due to any mental health issues. I have taken them into account, however, in my finding of special circumstances.

In relation to the submission and tendered material concerning his classification and that he will be in protective custody - the material placed before me is not conclusive and does not really indicate if this will occur or not. Nevertheless, noting his previous occupations, I am prepared to accept that he will be at risk and most probably placed in some form of protective custody - though the conditions that would be consequently imposed are unknown to me.

Also, in relation to any proposed hardship in relation to his de facto partner, I do not find that they amount to exceptional, and even though I take them into account overall in the sentencing disposition, I do not find them to be

RSB:SND

a mitigating factor.

#### THE SENTENCE ITSELF

The Court is also cognisant of the fact that the non-parole period ultimately imposed must reflect the objective gravity of the crimes, taking into account the subjective features, and be ‘the minimum period for which the offender must be kept in detention for the offence’.

There is no rule of law that determines whether a sentence must be concurrent in whole or in part or else consecutive: *Cahaydi v R* [2007] NSWCCA 1. The overarching principle was expressed by Howie J in *R v Jarrold* [2010] NSWCCA 69 at [56] , where his Honour said that:

“The question to be asked is whether the sentence for one offence encompasses the criminality of all the offences”.

Here the offender is to be sentenced for 34 serious offences of misconduct and sexual assault upon 13 victims. The ultimate sentence served by the offender must reflect the total criminality of the offences he committed. A degree of accumulation is appropriate to ensure the criminality of each offence is reflected in the sentence imposed.

In sentencing the offender, I have had regard to the Judicial Commission statistics. Of course, they are, at best, a blunt tool only, because the circumstances in which the present offences can be committed are as varied as are the offenders referred within those statistics.

I have also had regard to other sentences relating to misconduct in public office, of which there are not many, and sexual assault. Again, of course, that has provided limited assistance, recognising that reasonable consistency does not call for numerical equivalents in sentences imposed, but rather consistency in the application of relevant legal principles and sentencing provisions.

RSB:SND

I have taken into account the various purpose of sentence under s 3A of the *Crimes (Sentencing Procedure) Act* and I have taken into account the mitigating and aggravating factors set out in s 21, as outlined above.

Having had regard to s 5 of the *Crimes (Sentencing Procedure) Act*, and having considered all possible alternatives, I am of the view that no penalty other than imprisonment is appropriate. Given the nature and seriousness of the offending before this Court, in particular the matters I have referred to earlier, I have taken into account the principles of totality and proportionality.

I also intend to proceed to sentence the offender by way of an aggregate sentence, pursuant to s 53A of the *Crimes (Sentencing Procedure) Act*. It is necessary to ensure that the aggregation of the sentences adjust an appropriate measure of the total criminality involved, and the aggregate non-parole period must reflect the minimum period of time it is required to be served by an offender, having regard to the purposes of sentencing.

It will be apparent I have made a finding of special circumstances, such that the ratio between the aggregate non-parole period and the aggregate head sentence has been adjusted to some extent. I understand my finding results in a variation of one of around 66% - this is intentional. The reasons for this are the fact there will be a degree of accumulation, it is his first custodial sentence and his time in custody will be more onerous than it would otherwise be due to his previous occupations, his mental health issues, his age and COVID-19.

I recognise that the unavoidable prospect of the sentence is that the offender may die in gaol. A just and appropriate sentence must accord due recognition to the human dignity of the victims, the public expectation of those in public office to perform their roles appropriately and the legitimate interest of

RSB:SND

the general community in denunciation and punishment of someone who offends in this way.

The effect of the sentences is one in which exercise of my sentencing discretion I have determined represents a proper period of incarceration for the total criminality involved in the offences.

Pursuant to s 53A(2)(b) of *Crimes (Sentencing Procedure) Act* I propose the following sentences as those that would have been imposed if the Court did not proceed to impose an aggregate sentence. The indicative sentence I would have imposed for each offence is as follows:

Count 2, an indicative sentence of six months.

Count 3, an indicative sentence of nine months.

Count 4, an indicative sentence of ten months.

Count 5, an indicative sentence of two months.

Count 6, an indicative sentence of 11 months.

Count 7, taking into account the 10% discount 18 months.

Count 8, an indicative sentence three months.

Count 9, an indicative sentence of three months.

Count 10, an indicative sentence of 16 months.

Count 14, an indicative sentence of three months.

Count 22, an indicative sentence of 14 months.

Count 23, an indicative sentence of 18 months.

Count 24, an indicative sentence, taking into account the plea and the 10% discount, two years.

Count 25, an indicative sentence of nine months.

Count 26, an indicative sentence of 18 months.

Count 27, an indicative sentence of two years, six months.

RSB:SND

Count 28, an indicative sentence of seven years with a non-parole period of four years, seven months.

Count 29, an indicative sentence of seven years with a non-parole period of four years, seven months.

Count 30, an indicative sentence of eight years with five years, four months non-parole period.

Count 31, an indicative sentence of eight years with five years, four months non-parole period.

Count 32, taking into account the discount of 25%, two years.

Count 33, an indicative sentence of 20 months.

Count 34, an indicative sentence of 18 months.

Count 35, an indicative sentence of 18 months.

Count 36, with its 10% discount, 15 months.

Count 37, with its 10% discount, 20 months.

Count 38, with its 10% discount, 20 months.

Count 42, an indicative sentence of 18 months.

Count 43, an indicative sentence, with the 10% discount, of two years, six months.

Count 44, an indicative sentence of nine years with six years non-parole period.

Count 45, an indicative sentence of 18 months.

Count 49, an indicative sentence of 12 months.

Count 50, an indicative sentence of 18 months.

Count 51, an indicative sentence of 16 months.

Mr Astill, you are convicted of the 27 offences for which the jury found you guilty and the seven counts to which you pleaded guilty.



RSB:SND

I impose an aggregate sentence of 23 years imprisonment, to date from 24 August 2022. The sentence will date from 24 August 2022 to take into account the total of time you have spent in custody which includes the one day upon charging.

I impose an aggregate non-parole period of 15 years and four months, to commence on 24 August 2022 and it will expire on 21 December 2037.

You will become eligible for parole on 23 December 2037 and the total term will expire on 23 August 2045.

In relation to the sequence 30 on the s 166 certificate, I find proven, but in light of my other sentences I have convicted and impose no further penalty.

That is my sentence.